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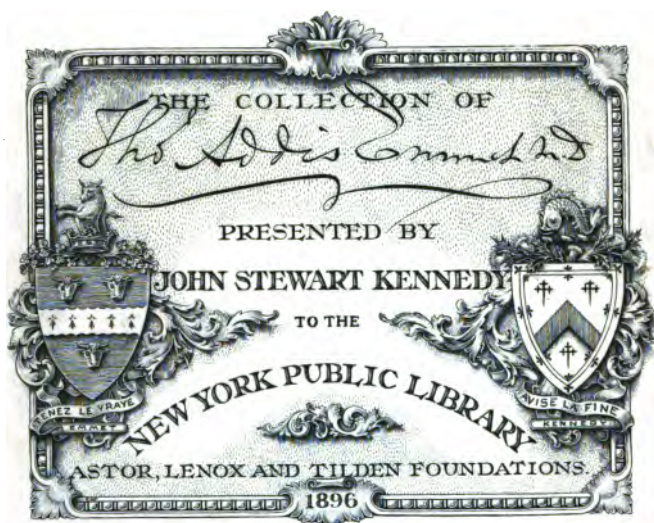
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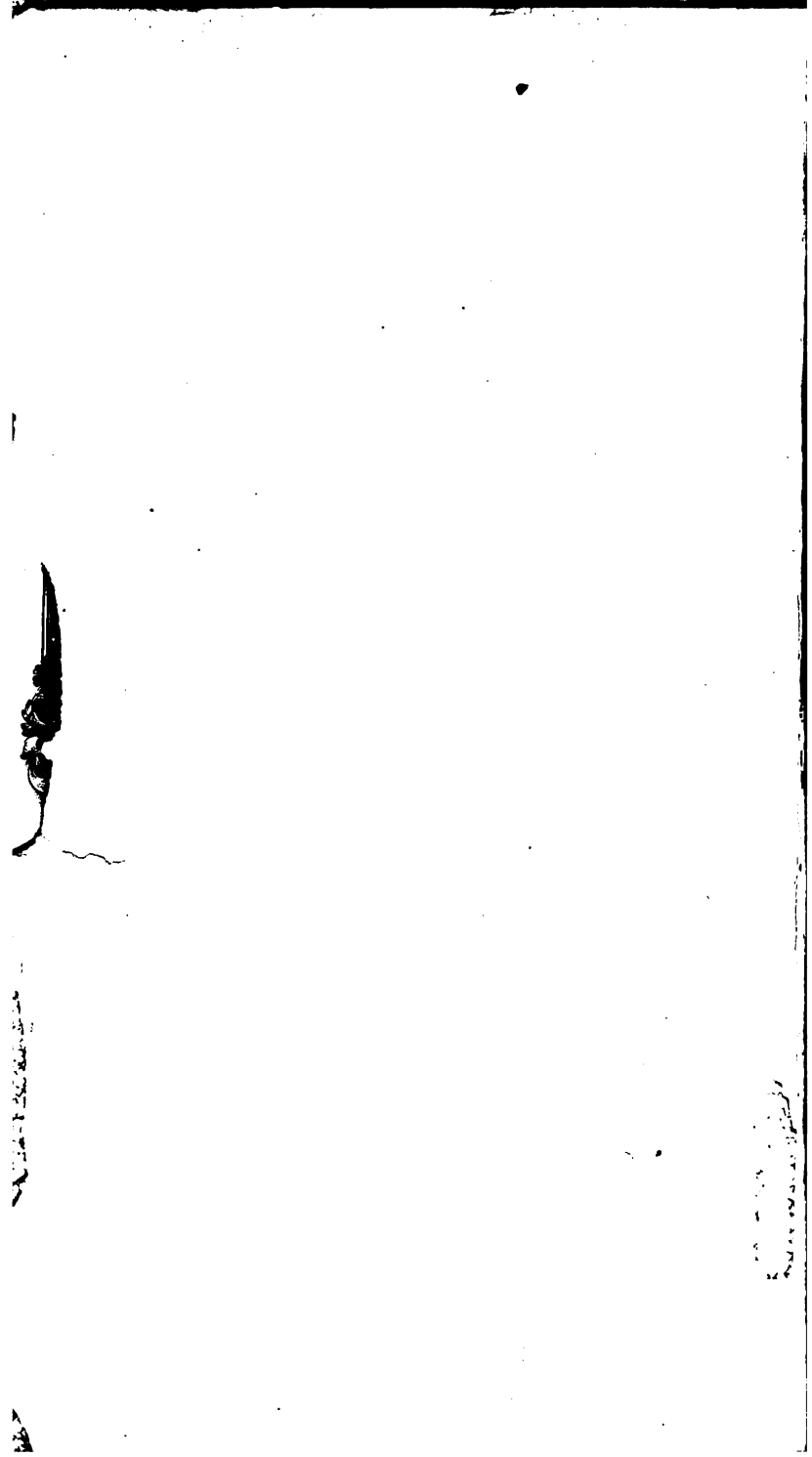
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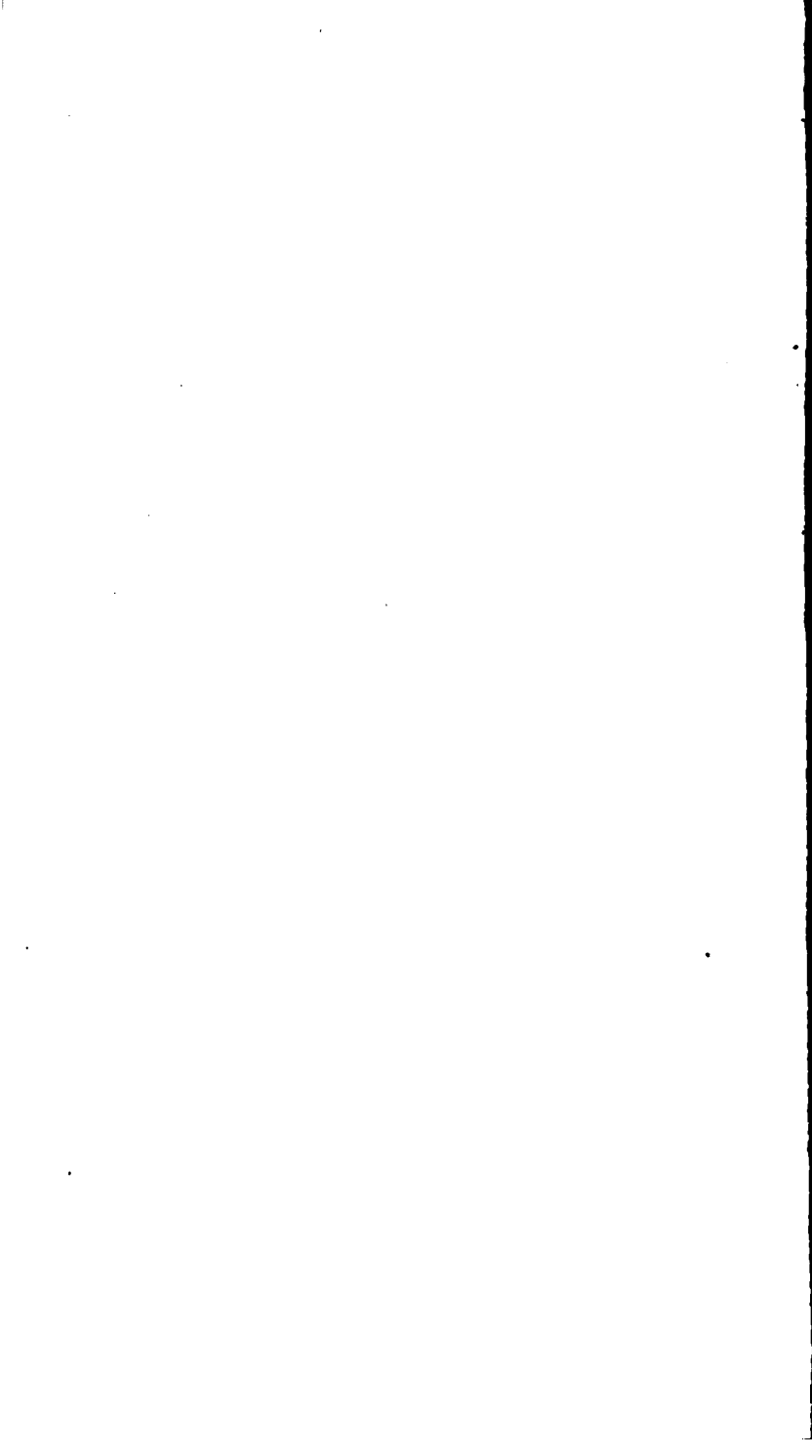


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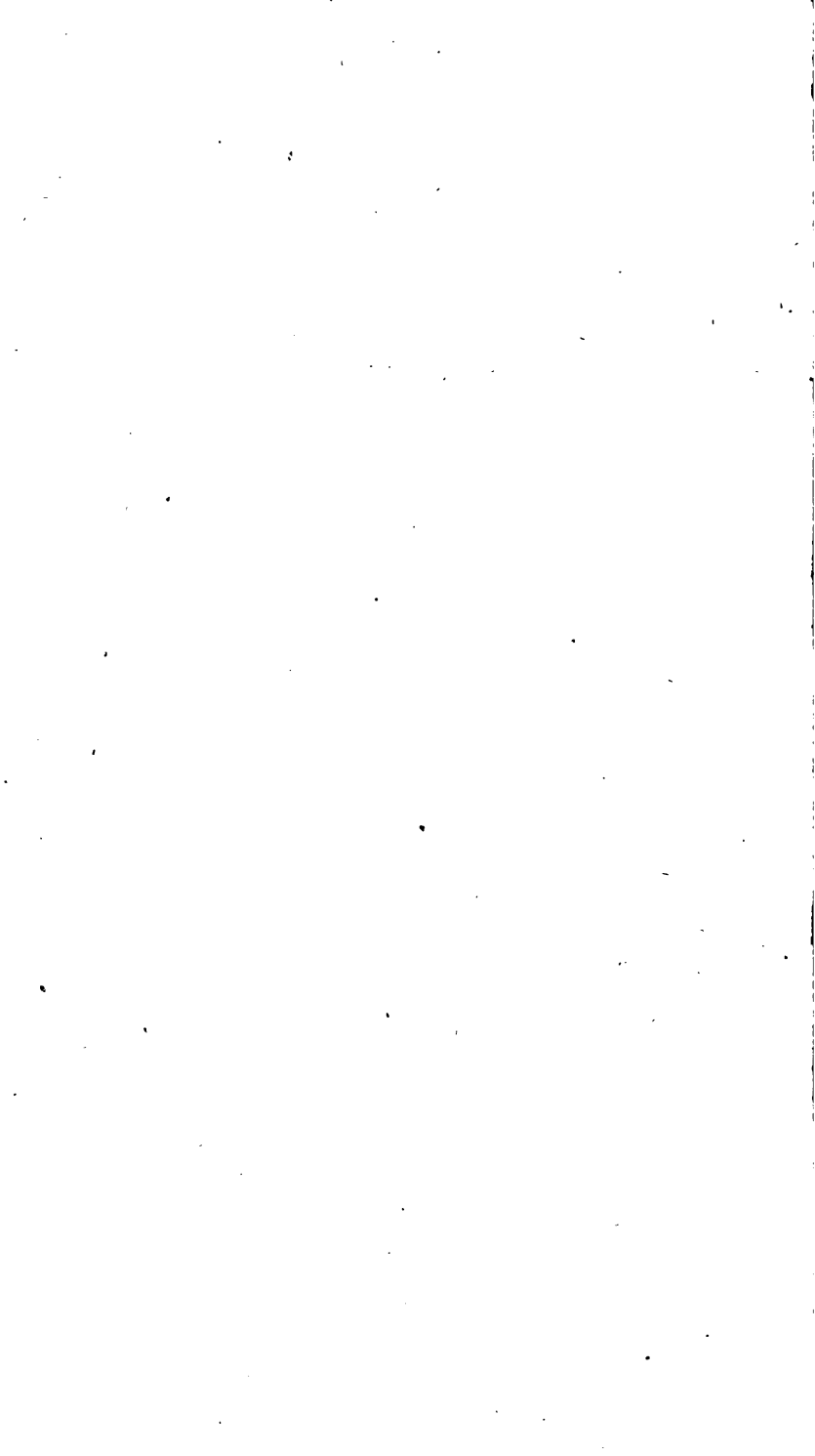












REPORT
OF THE
PROCEEDINGS

IN
Cases of High Treason,
AT A
COURT OF OYER AND TERMINER,
HELD AT THE NEW SESSIONS HOUSE,

UNDER A
SPECIAL COMMISSION,
IN THE MONTHS OF AUGUST, SEPTEMBER, AND
OCTOBER, 1803.

BY WILLIAM RIDGEWAY, ESQ.
BARRISTER AT LAW.

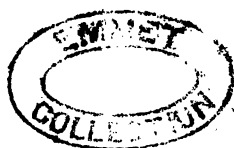
IN TWO VOLUMES.

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1803.



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TO

SECRET

SECRET

A R E P O R T

OF THE

PROCEEDINGS

IN

Cases of High Treason.

SPECIAL COMMISSION.

ON the night of Saturday the 23d of July 1803, a rebellious insurrection broke out in the County and City of Dublin; the most flagitious outrages were committed, and the Right Hon. Lord KILWARDEN, Chief Justice of the King's Bench, together with his nephew, the Rev. RICHARD WOLFE, and several others were barbarously murdered by a tumultuous assemblage of people armed with pikes and other offensive weapons.—The insurgents however was soon defeated by the rapid and courageous exertions of the Garrison and Yeomanry of Dublin, and a number of prisoners having been taken, a special commission of *Oyer and Terminer* for the County and City of Dublin, passed the Great Seal for the purpose of trying them.

The Commission was directed to the Right Hon. Lord NORBURY, Chief Justice of the *Common Pleas*, William
No. 1. B Downes,

DOWNES, Esq. Second Justice of the *King's Bench*,
MATHIAS FINUCANE, Esq. Second Justice of the *Common Pleas*,
DENIS GEORGE, Esq. Second Baron of the *Exchequer*, and **ST. GEORGE DALY**, Esq. Third Baron of the *Exchequer*, appointing them or any of them Justices and Commissioners of *Oyer and Terminer*, within the County and City of *Dublin*, to hear and determine all treasons, misprisions of treason, murders and manslaughters committed in said counties, or either of them.

Under this commission, the court was opened by the Hon. Mr. *Justice DOWNES*, the Hon. Mr. *Justice FINUCANE* and the Hon. Mr. *Baron DALY*, at the Sessions House in Green-street, on the 24th day of *August* 1803, when the following Grand Juries were sworn.

FOR THE CITY.

Abr. B. King, *Foreman*,
 Arthur Stanley,
 Nathaniel Craven,
 Hans Blackwood,
 Joshua Pounden,
 Arthur Guinness,
 George Carleton,
 W. Colville, jun.
 Mark Magrath,
 William Sparrow,
 Jos. Holmes,
 Richard Spear,

Godwin Pilsforth,
 Mark Bloxham,
 John Hone,
 Joseph Ashley,
 Wm. Walsh,
 James Hamilton,
 John Oldham,
 Richard Wilson,
 Wm. Leet,
 Francis Hamilton,
 Roger Horner, Esqrs.

FOR THE COUNTY.

Fred. J. Falkiner, *Foreman*,
 John Finlay,
 Thomas Baker,
 Robert Alexander,
 Sir John White, Kt.
 Alex. Kirkpatrick,
 Thomas Connor,
 Christophilus Clinch,
 Joshua Paul Meredyth,
 John Garnet,
 John Exshaw,
 Wm. M. Mason,

Richard Evans,
 Wm. Cowley,
 W. B. Swan,
 John Carleton,
 George Grierison,
 P. H. Godfrey,
 Wm. Rawlins,
 James Willizms,
 Robert Leigh,
 Wm. Long,
 Charles Thorpe, Esqrs.

Mr.

Mr. *Justice* DOWNES (LORD NORBURY being detained on Circuit) delivered the following Charge:—

Gentlemen of both these Grand Juries,

YOU are called on to execute an important duty to your country, that of a Grand Inquest to enquire on behalf of his majesty, whether sufficient grounds exist to put upon their trials any of the prisoners in the Gaols of your Counties respectively, against whom Bills of Indictment shall be laid before you.

The Commission under which we sit, and which you have heard read, is substantially the same with that under the authority of which you have been used to see the King's Judges administer the Law in this place, where most of you have often given your assistance in the same situation in which you are now called on to act.—With respect therefore to the general nature of your duty in inquiring into ordinary offences, you do not stand in need of any instructions or advice from this Bench.

But yet I feel that under the circumstances in which we are called upon now, to execute the Duties imposed upon us, it may be not altogether useless that I should address a few words to you.

You are called together as Grand Jurors at an unusual time—the Offences that will come before you, and which will form the principal, if not the only objects of your enquiry, are of an uncommon nature—the Public Peace has lately been violently broken, and that so notoriously, that no man is ignorant of it; and with that degree of audacity that it has induced his Majesty's Government to lose no time in having the circumstances which attended that Outrage judiciously enquired into—and it has been thought proper, as soon as the minds of the public should be composed and tranquilized after what has happened, to bring before you the enquiry which you are now to enter upon.

From an inspection of some of the informations, which have been laid before me, I am led to believe, that Indictments will be sent up to you, charging some individuals with the greatest crime known to the Law, that of High Treason.

For very many years, and until a very short time before the late Rebellion broke out, this offence was unknown in this

this country; peace and internal tranquillity with their natural consequences, public prosperity and rapid national improvement, gave us grounds to hope that this Island (in many respects peculiarly favoured by Providence) would have continued to be conscious of the blessings it enjoyed and anxious to preserve them.—But unhappily some artful and wicked men, under the fallacious promises of impossible benefits, and suggesting schemes of fancied improvements of the Constitution which they knew to be impracticable, and did not wish to realise, concerted for a time under such pretences the design of utterly destroying the legal Government of the Country, and substituting in its place the wretched anarchy, inconsistent with all social happiness and genuine liberty, which they called a Republic; founded on the model of that ever-changing system adopted in France, which has occasioned more misery than History has ever attributed to any conspiracy against the happiness of mankind.

Such men meditating the destruction of every thing that was dear to us, as subjects of a free country, enjoying more rational liberty than any other on the globe, except Great Britain, and equal in that respect with her, excited, prepared, and matured a dreadful Rebellion, and did not hesitate to call in the aid of a foreign enemy, and with equal folly and wickedness expected that they should themselves obtain that power of which the State should be deprived.

The exertions of his Majesty's Government, aided most powerfully by his loyal subjects, speedily proved that the attempt was vain—the open Rebellion was crushed and the foreign Enemy defeated; firmness and lenity were in their turn applied as the circumstances seemed to the Government to require, and tranquillity was apparently restored. Among the measures wisely resorted to on that occasion, an Act of General Pardon with some few and very proper exceptions was enacted—this wise and humane measure might naturally have been expected to have had great influence on the minds of a deluded multitude; and doubtless in a great number of instances it had, and notwithstanding the outrages which will be the subject of your enquiry, no doubt can be entertained, that very many of those formerly implicated in the guilt of Rebellion, have availed themselves of his Majesty's mercy and retired into peace and industry—and I believe there

is good ground to expect that many of that description, from a thorough conviction of the falsehood of the pretences by which they were formerly seduced, by the experience of the misery occasioned by the outrages committed; and by the observation of the consequences that the baneful principles disseminated among them had produced in other countries where they unhappily had prevailed—would be found ready, if the necessity should arise, to give to the King's Government effective aid.

But unhappily I fear from the informations that have been laid before me of witnesses who will be submitted to your examination, it will appear that there still exist wicked and designing men, enemies to public tranquillity, capable of exciting a furious multitude to every enormity, and it will be for you to consider the facts of the outrages committed, with what object they have been accompanied, and whether any and which of the Prisoners have participated in those facts and in that object.—It is my duty to make some observations on the general nature of the facts charged in those informations, and to state to you the law as applicable to them, in the different aspects in which those facts may be viewed; and in doing so I shall not advert to the particular case of any individual.

It is probable that Indictments for High Treason may be sent up to you against some of the prisoners in custody, grounded on the statute of 15th Edward 2d, upon which the law of Treason in this country rests; those branches of the statute more particularly necessary to be adverted to, are those which declare it to be High Treason where a Man doth compass or imagine the death of our Lord the King, or (2dly), if a Man do levy War against our Lord the King in his Realm.

Those two clauses of the statute are the most material to be adverted to on this occasion—there is however another clause of that statute which by possibility may come under consideration; and that is, (in the words of the statute) if a Man be adherent to the King's Enemies in his Realm, giving them aid and comfort in the Realm of elsewhere.—That offence so described is, as well as the other two I have mentioned, by that statute declared to be High Treason. I do not know whether it be intended to send for your consideration any Indictment grounded on that clause in the statute,—it may be sufficient to state to you upon it, that any act whatever by which the public enemy is aided or encour-

encouraged, — any act by which the enemy is strengthened and the King's hands are weakened, *if done with that intention*, is an act of adhering to the King's enemies.

In the first species of Treason, that of *compassing or imagining* the Death of the King — it is obvious, that the Law considers the crime, to be the *wicked intention and imagination of the Heart*. But in this, as well as the two other species of treason which I have mentioned, some one or more acts of the prisoner done in execution of his traitorous purpose must be charged by the Indictment and *proved in evidence*; these are called *overt acts*.

So that although the Law makes the Treason to consist in the *imagination of the Heart*, yet it is wisely provided that no man shall be tried for *secret intentions only*, but that the crime of which he is accused, shall be manifested by *acts done with the view of effecting his traitorous design*. And those *acts* must be *charged in the Indictment*, that the prisoner may be apprized of the nature of the case intended to be proved against him, and thus be enabled to prepare his defence. I must however observe that although many overt acts of Treason be charged in the Indictment, yet the satisfactory proof of one of them is sufficient to convict the prisoner.

With respect to this species of Treason, — that of *compassing or imagining the Death of the King*, it ought also to be observed to you, that this offence is not confined to actions and attempts of the more gross and flagitious kind, — to assassination, or attempts *directly and immediately* aiming at the life of the King; the Law (for the sake of the Public) extends its care of the King's personal safety to every thing wilfully and deliberately done whereby his Life may be endangered, thus, entering into measures for deposing the King, or to get his person into the power of the conspirators — these offences are overt acts of Treason, for (says an able Judge and one of our best writers on the subject) experience hath shewn that between the *Prisons* and the *Graves* of Princes, the distance is very small.

But offences, still *less immediately personal* to the King, have been justly and rationally held to fall within the same rule of Law, as having a tendency (though *not so immediate*) to the same end. — And therefore entering into measures in concert with foreigners and others in order to procure an invasion of the Kingdom — or going into a foreign Country for that purpose, or even *intending to go* abroad

abroad for that purpose and *taking any steps in order thereto*, have been held overt acts of this species of Treason, of compassing the King's Death : so also levying war against the King, though a distinct Treason in itself, may also be laid as an overt act of the species of Treason I am speaking of, compassing the King's Death, because it has a manifest tendency to the same possible fatality.

It is no objection to the doctrine of Treason in compassing the King's Death, that the facts happened in this country where the King does not personally reside, and that the same facts which in England might be reasonably supposed to involve the person of the King in actual danger, cannot be said, happenning here, to expose him in the same degree to the same mischief.—This is no manner of objection to the application of the doctrine here ; for the same wicked intention of the heart which the law meant to punish, and to protect the King and all his subjects from, exists in both cases ; the locality of the act may make the ultimate effect of destroying the King's life more or less *probable*, from a consideration of the distance from his person at which the overt act is committed ; but it is not the different degrees of probability of that fatal effect following that constitutes or can vary the crime, the fatal effect of the overt act, may be produced through a progress of circumstances more or less numerous or complicated on account of the distance, but still its tendency is the *same*, and nothing could be urged on that ground that might not be as strongly urged with respect to *overt acts* happening in Scotland or Wales—and indeed it has never admitted of a doubt.

But that branch of the statute which would be found perhaps most naturally and directly (in the minds of un-technical men) to apply to the facts stated in the informations, is that of *levying war against the King in his realm*.

This species of Treason will also require an observation or two, which I shall, as I have upon the other species, take care to give, from an authority as highly respected as any in the law, and which will admit of no doubt.

All insurrections in order to effect innovations of a *public and general concern*, by an armed force, are in construction of law High Treason, within the clause of the statute of levying war against the King, for although they may not be directly levelled against the person of the King, they are, as that writer observes, against his Royal Majesty and authority ;

authority; and besides, they have a direct tendency to dissolve all bonds of society, and to destroy all property, and all Government too by numbers and an armed force. So, *insurrections* for redressing of *national* grievances, or for the reformation of real or imaginary evils of a *public* nature, and in which the *insurgents* have no *special* interest; risings to effect these ends by force and numbers, are, by construction of law within the clause of levying war, for they are *levelled* against the King's Crown and dignity.

The purposes of the rising, to bring it within this branch of the statute, must be some *general public object* :—not one in which the parties have a particular and *special* interest, as where a rising takes place for an object affecting only those concerned, or a particular set of men, as for pulling down particular inclosures, or to remove nuisances supposed to effect the parties themselves,—or even to destroy a particular person, these and the like *particular* objects enforced tumultuously and by armed numbers, though *highly criminal*, and subject to severe punishment, are not High Treason.

But if you should find from the evidence that will be laid before you—a rising by armed numbers, to enforce a *general public* object by arms, unquestionably it is high Treason within the clause of levying war against the King.

If you should find that numbers of men have assembled, have armed themselves and have proceeded to acts of force and violence, having one general object, that of destroying the King's government and lawful authority,—undoubtedly that offence is High Treason; every person so assembling and acting is guilty of levying war against the King.

If the evidence shall shew you that such an armed multitude have assembled, it will be your duty to consider the object they had in view—and to this end you will weigh the evidence you shall receive.

The objects of men are to be discovered by their *words* and their *actions*;—declarations of such persons so assembled, at the time, become material evidence against them, and if made publicly, and openly among their confederates, and in their hearing, may be given in evidence against the whole of the party so assembled.

So also writings and printed papers in possession of such persons, and *plainly connected with the design* imputed to them,

them—are also material evidence for your consideration, so also, the conduct of the insurgents during and previous to the fact will of course furnish matter important for your consideration in discovering the object of the insurrection. If you shall find individuals coming from great distances to the perpetration of this outrage, if you shall find numbers of them living at great distances from each other, previously unacquainted with each other, and connected only by the common objects of the rising ;—if the evidence shall satisfy you, that collections of arms of any kind, of ammunition, military ensigns and uniforms have been made for the use of those insurgents, if it shall appear to you—that such collections must have required considerable time and considerable expence to effect—if you shall find that they were cautiously concealed until the moment they were to be used ; these will be material facts, and greatly tend to elucidate the *object* of such insurrection, and to shew that it was for a purpose of great atrocity, magnitude, and moment.—And you will judge whether it were not for some *general object*, and if so, whether such acts have been done with a view to the *object* which will be charged in the Indictment—if the evidence shall satisfy you of that, then it becomes a case of High Treason ; and with respect to every man whom you shall find ground to charge as being engaged, or in any manner participating in those acts—it will be your duty to find the bill against him :—which as you well know, is not decisive of the question of his guilt, but is a solemn declaration of yours, upon due enquiry, that there is ground to put him on his trial for the fact.

But if on the other hand these facts should not be satisfactorily established in evidence—if though an insurrection should be shewn to you to have existed, yet if the *object* of the insurgents should not appear to be of that *general* nature that I have described to you, or that shall be charged in the Indictments sent up to you, it will be your duty to ignore any bill containing a charge of *High Treason* ; even though in the course of that dreadful evening (the events of which you will have to consider) murders of the most horrid description were perpetrated, and (if the informations are true) not in the heat of a conflict however unwarrantable and flagitious, but before this insatuated multitude had met with any resistance, before there was time to oppose their fury, unarmed and unre-

sisting individuals fell cruelly mangled, and among them one whose memory will long be dear to this country, in whose service he had passed many of this best years devoted to its interests: whose loss cannot be repaired, who in the last moments of his existence felt, and while utterance remained, expressed that veneration for the Law, and those sentiments of mercy even towards his murderers, which had through-life governed his actions: of him I shall say no more; my purpose in addressing you from this place is not to excite *your* feelings or my *own*, but to call upon you for the cool exercise of your judgment in considering the case before you, and to conjure you, not because great atrocities have been committed, rashly to conclude that the persons charged have participated in the guilt. I am persuaded that you will (as you ought to do) weigh deliberately and dispassionately the testimony that will be produced to you.

Before we separate I think it right to mention, that lamentable as the events of that unhappy evening were, yet some consolation is still to be derived from them,—they have been a cause of the strength of the country being prodigiously increased; the King's Loyal Subjects have redoubled their exertions, roused by the calamities that we deplore; and have with a zeal and alacrity that cannot be exceeded rallied round the government with a strength of support that I trust will be irresistible.

But still, gentlemen, it will be incumbent on you when you shall be relieved from the duty you have undertaken in this Court, not to relax in your endeavours to preserve the public peace;—it concerns every man to lend his best aid to the support of the King's Government in times like these. I trust the magistrates both of the County and City will unceasingly attend to the execution of their duty—there is a great and honorable trust reposed in them—much must depend upon their exertions, and I trust that they will be found active, vigilant and zealous.

You will proceed to consider the bills that are ready to be laid before you, the Court will sit for some time now to receive from you such as you shall have disposed of, by finding or ignoring as the circumstances in evidence shall warrant you to do,—and afterwards adjourn to a future day, to receive such bills as you shall not have this day disposed of.

In

In some time, the Grand Juries returned Bills against several Prisoners, who were immediately brought to the Bar, and informed that Indictments for High Treason were found against them, and they were called upon to name their Counsel and Agents to be assigned to them, which they accordingly did.

Felix Rourke named Mr. CURRAN and Mr. PONSONBY as Counsel, and Mr. *Wm. Lewis Walker* as Agent.

John Killen named Mr. CURRAN and Mr. MAC NALLY as Counsel, and *Francis Flood* as Agent.

John M'Cann, alias *M'Kenna*, named Mr. CURRAN and Mr. MAC NALLY as Counsel, and Mr. *Flood* as Agent.

James Byrne named Mr. MAC NALLY as Counsel, and Mr. *Leonard Mac Nally* as Agent.

Walter Clare said he had no means to get Attorney or Counsel.

——— *Donnelly* named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* Agent.

Nicholas Farrell, alias *Tyrrell*, named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Laurence Begley, alias *Bayly*, named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Michael Kelly named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Martin Bourke named Mr. MAC NALLY as Counsel, and Mr. *James Curran* Agent.

Edward Kearney, alias *Carney*, named Mr. BETHEL as Counsel, and Mr. *L. Mac Nally* as Agent.

John Begg named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Thomas Maxwell Roche named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Patrick Maguire named Mr. CURRAN and Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Mr.

Joseph Doran named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Owen Kirewan named Mr. CURRAN and Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

The Counsel and Agents thus named were accordingly assigned, and a General Order made that they should have access to the prisoners at all reasonable hours.

Upon the motion of Mr. ATTORNEY GENERAL, *Walter Clare* was again put to the bar and asked, whether he would name any Counsel or Agent.

He said, he was a poor labouring-boy, and had no means ; that he worked with Mr. *Roe*, of Marrow-bone-lane, and was taken upon suspicion, and knew nothing of the matter.

Mr. ATTORNEY GENERAL said, it would be right to inform the prisoners, that their trials would be proceeded upon on the 31st of *August*, inst. and in the mean time they should be served with copies of their Indictments.

The prisoners were all desired to be ready for trial upon the 31st.

The Court adjourned to *Monday*, the 29th of *August*.

Monday, 29th August.

THE Court sat pursuant to adjournment, when a Bill of Indictment for High Treason, was found against *Dennis Lambert Redmond*, who was brought to the bar, and named Mr. CURRAN and Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Edward Kearney was brought to the bar at his own desire to name a second Counsel, when he named Mr. CHARLES BALL.

Walter Clare was in like manner brought to the bar, and he named Mr. MAC NALLY as Counsel, and Mr. *L. Mac Nally* as Agent.

Wednesday,

Wednesday, 31st August, 1803.

The Court opened pursuant to adjournment:
Judges present, Lord NORBURY, Mr. Justice FINUCANE,
Mr. Baron GEORGE, and Mr. Baron DALY.

Edward Kearney was brought up, and arraigned upon
the following Indictment :

County of the City of } THE Jurors for our Lord the King upon their oath present, that
Dublin, to wit. } Edward Kearney, late of Thomas-street, in the city of
Dublin, and in the county of the city of Dublin, yeoman,
otherwise called Edward Carney, a subject of our said Lord
the King, not having the fear of God in his heart, nor
weighing the duty of his allegiance, but being moved and
seduced by the instigation of the Devil, as a false traitor
against our said Lord the now King, his supreme, true,
lawful and undoubted Lord, the cordial love and true and
due obedience which every true and dutiful subject of our
said Sovereign Lord the King, towards him our said Lord
the King should bear, wholly withdrawing, and contriving
and intending the peace and common tranquillity of this
realm to disquiet, molest and disturb, and the government
and Constitution of this realm to change, subvert and alter,
and our said Lord the King from the royal state, title,
honor, power, imperial crown and government of this
realm to depose and deprive, and our said Lord the present
King to death and final destruction to bring and put : He,
the said Edward Kearney, otherwise called Edward Carney,
on the twenty third day of July, in the forty-third year of
the reign of our said Lord the King, at Thomas-street afore-
said, in the city and county of the city of Dublin afore-
said, with force and arms falsely, wickedly and traitorously, did
compass, imagine and intend, our said Lord the King,
then and there his supreme, true and lawful Lord of, and
from the royal state, crown, title, power and government,
of this realm to depose and wholly deprive, and our said
Lord the King to kill and bring and put to death; and
that to fulfil, perfect and bring to effect his most evil and
wicked treason and treasonable imaginations and compass-
ings afore-
said, he, the said Edward Kearney, otherwise called
Edward Carney, as such false traitor afore-
said, on the said
twenty-

twenty-third day of *July*, in the said forty-third year of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms falsely, maliciously and traitorously, did conspire, confederate and agree, to and with divers other false traitors whose names are to the Jurors aforesaid unknown, to raise, levy and make a public and cruel insurrection, rebellion and war, against our said Sovereign Lord the King, within this Kingdom.

And that afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *Edward Kearney*, otherwise called *Edward Carney*, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, did arm himself with and did bear and carry a certain weapon called a *Pike*, with intent to associate himself with divers other false traitors, armed with guns, swords and pikes, whose names are to the said Jurors unknown, for the purpose of raising, levying, and making insurrection, rebellion and war, against our said Lord the King, and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said Lord the King within this Kingdom.

And that afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *Edward Kearney*, otherwise called *Edward Carney*, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to wit, to the number of one hundred persons and upwards, armed and arrayed in a war-like manner, to wit, with guns, swords and pikes, being then and there unlawfully and traitorously assembled and gathered against our said Lord the King, did prepare, levy, ordain and make public war against our said Lord the King, against the duty of the allegiance of him the said *Edward Kearney*, otherwise called *Edward Carney*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

And

And the said Jurors of our said Lord the King upon ^{Second} ^{Count} their oath do further present, that the said *Edward Kearney*, otherwise called *Edward Carney*, being a subject of our said Lord the now King, and not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the Devil, and entirely withdrawing the love and true and due obedience which every subject of our said Lord the King should and of right ought to bear towards our said Sovereign Lord the King, and wickedly devising and intending to disturb the peace and public tranquillity of this Kingdom on the twenty-third day of *July*, in the forty-third year of the reign of our said Sovereign Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, unlawfully, maliciously and traitorously, did compass, imagine and intend, to raise and levy war, insurrection and rebellion, against our said Lord the King within this Kingdom; and in order to fulfil and bring to effect the said traitorous compassings, imaginations and intentions last mentioned, of him the said *Edward Kearney*, called *Edward Carney*. He, the said *Edward Kearney*, otherwise called *Edward Carney*, afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords and pikes, being then and there unlawfully, maliciously and traitorously assembled and gathered together against our said Lord the now King, most wickedly, maliciously and traitorously did ordain, prepare, levy and make public war against our said Lord the King, his supreme and undoubted Lord, contrary to the duty of the allegiance of him the said *Edward Kearney*, otherwise called *Edward Carney*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded Not Guilty; and upon being asked, was he ready for his trial? he said he was.

Felix

Felix Rourke, John Killen, J. McCann, Thomas Maxwell Roach, John Begg, Owen Kirwan, Walter Clare, James Byrne, and Martin Burke, were severally arraigned, and pleaded Not Guilty, and said they were ready for trial.

Edward Kearney was then put to his challenges; and the Panel being called over, the following Jury was sworn, after eight peremptory challenges by the Prisoner, and five set aside on the part of the crown:

Richmond Allen,	John Duncan,
• Robert Henry French,	Godfrey Byrn,
James Walcot Fitzgerald,	Richard Davidson,
• William Snell Magee,	Thomas Kennan,
John Halpin,	• William Stanford.
William Moore,	Thomas Kinder.

Mr. O'GRADY opened the Indictment.

Stewart D. Prady Mr. ATTORNEY GENERAL.

My Lord, and Gentlemen of the Jury,

The Prisoner, who is now brought before you for trial, stands charged with the crime of High Treason; and it will be your duty, Gentlemen, in passing sentence upon him to discharge your minds altogether of every thing you may have heard upon this subject, previous to your being sworn upon his jury. Confine your consideration to the evidence which shall be now laid before you, and give to the Prisoner the full and impartial benefit of those laws, which we accuse him of having endeavoured to subvert.

Gentlemen, the Prisoner stands indicted upon the Statute 25th Edward III. and the indictment is founded upon two clauses of the statute—*first*, for compassing and imagining the death of the King—and *secondly*, for levying war against the King.

Gentlemen, in support of the first count of the indictment, there are three overt acts charged as the means, by which the Prisoner has disclosed his traitorous intention. The first overt act is, that he did agree and conspire to compass and bring to effect the death of the King; secondly, that he armed himself for the purpose of levying war against the King and his Troops; and thirdly, that he actually did levy war.

The

The second count is grounded upon the clause for levying war; and in support of that, there is one overt act stating, that war has been actually levied—and upon the whole of the case, if you, Gentlemen, shall be satisfied, that the Prisoner took a part in, and gave aid to the insurrection, which was traitorous in itself, you will be bound to find him guilty; because, if it shall appear, and I address you in this respect subject to the correction of the court, that the insurrection of the 23d of *July* last was a rebellious and traitorous insurrection, every person who participated in it became, in consideration of law, guilty of the crime, though not previously instructed as to the motives and objects of that insurrection: because when a number of persons join each other in committing illegal acts, they are exposed to all the consequences which follow from them, and are guilty of the crime of which their associates are guilty. If the wisdom of the law did not so ordain it, we should all be in a lamentable situation; for it is well known to every man who hears me, that those who are generally employed in executing outrages of this nature, are not the persons who originally conceived the design.

In stating to you the particular circumstances of this case, so far as they relate to the Prisoner, it will not be necessary for me to enter into a very minute or very accurate survey of the progress of disaffection in this country. But, certainly, it is matter of some consolation to know, that the conspiracy which broke out into open insurrection and rebellion, on the 23d of *July* last, was confined within much narrower limits than the promoters of it are willing to inculcate. Whether we consider the numbers who have embarked in the enterprise, their wealth or their character, it will appear contemptible in the extreme. So far as it had for its odious object, the subversion of the government and constitution of this country, it was absurd and romantic, it was idle and visionary even in the opinion of many of those who embraced it. But so far as it was calculated to make a false impression of our situation upon foreign countries, and to depreciate our loyalty in the estimation of Europe, it was a dangerous design; and though from the abandoned profligacy of those who were employed as the immediate instruments of its execution, we have to lament many private calamities and disgusting horrors: yet perhaps they should be considered as the visitations of Providence,

to confound the devices of our enemies, and to rouse the loyal energies of the nation. Already she has shaken off the indolence of peace, and has put on her armour ; she has seen the danger, and I trust she has become invulnerable.

Gentlemen, the last time we were collected here, upon an occasion similar to the present, was in the year 1798 ; and it would be in truth a dismal and distressing reflection, that during the interval which has since elapsed, the mildness, and clemency, and conciliation of our own government, contracted with the oppression, extortion, and tyranny exercised over France and the unhappy countries which surround her, should have wrought no change in the political feelings of Ireland. But I am happy to state, that there is no room for such reflections : the good sense and property of the country have taken the alarm, and can no longer be seduced by schemes of avarice and delusion.

Neither, Gentlemen, did the late insurrection originally proceed from the great body of the people—they were happy, contented, and tranquil, until a remnant of the old leaven was thrown in to ferment them.

You all recollect how the former conspirators were disposed of : some atoned with their lives for the evils they had inflicted upon their country ; others were doomed to all the misery of reflection, and banished from a country which they had contributed to disgrace ; many were permitted to reside amongst us, the greater part from the clemency of the crown, and a few perhaps from want of sufficient evidence of their guilt. I do not mean to impress upon your minds, that all those who survive are still hardy enough to prosecute their schemes : many of them I should hope had the benefit of experience, and have learned from their misfortunes to prefer industry and peace to anarchy and bloodshed ; and despairing to see established any where their own model of ideal and imaginary perfection in government, have at length become disposed to admit, that no people in any age or in any country have ever enjoyed more perfect freedom, or more full security for their persons and property, than those who at present have the happiness to live under the British constitution ; a constitution not only reasonably perfect in itself, but additionally recommended by being transmitted to us through a long succession of ages ; a constitution which we may peculiarly call our own, because no other people could derive the same
benefits

benefits under it. It has been fitted for us by our forefathers, and from our infancy we have been fitted to it. Give it to a new people, and with all its perfections it would be to them a new constitution. But generation after generation it has been adapted to our people and to our soil, and day after day we have been taught to admire its perfections, to conform to its provisions, and to be regulated by its laws. It is then emphatically our own constitution, and is so interwoven with our nature, that we can yield it but with our lives. It has been obtained by valour and by wisdom, and by the exercise of the same virtues it may be for ever preserved.

Gentlemen, I wish I could state, with truth, that all those former conspirators had taken the same view of the subject. But I have to lament, that many of them have not had the same benefit of repentance, but having grown hardened in their vices, and insensible of the miseries they were inflicting on others, they have persevered in their old habits, and contributed not a little to place the prisoner at the bar in his present unfortunate situation. Men of depraved minds and desperate fortunes, who have grown giddy from repeatedly turning in their own heated imaginations the same chimerical schemes of avarice and ambition, and who blinded their deluded followers with specious pretences for the public good, while they are in fact endeavouring to implicate them in all the horrors of confiscation and civil war.—Fondly hoping to emerge from the gulph in which their vices have involved them, they address themselves to the supposed grievances of others, in the vain expectation of alleviating their own. Men too necessitous to be idle, and too indolent to work, confirmed in the habit of vice, they resist all honest occupation, and become rebels by trade. In various disguises, and under various pretences, they travel from place to place, and from country to country, hawking reform, and emancipation and freedom, poisoning the peace of the people, and goading them to outrage and rebellion. To this end all their machinations contribute; treason is their staple commodity, by it only can they live. An Irish insurrection is the harvest which supports them.—The unhappy and deluded people who are duped by their artifices, meet their retribution in the bayonet or the rope, while the instigators too frequently escape, to plan new rebellions, and receive new rewards.

Gentlemen,

Gentlemen, it is from the union of these two classes, the wandering politician and the resident traitor, that we are indebted for the late insurrection in the capital. After the termination of the war, many of the former description, under feigned names, imported themselves into this country, and associating themselves with our resident rebels, have unceasingly exercised their ingenuity to provoke new disturbances.

But, gentlemen, it is with great satisfaction I state to you, that they found vast difficulties in disturbing the public mind.—From one end of the country to the other, the people were ready to resist their artifices, and decided in their resolution to continue not only quiet but contented;—unfortunately, however, the restless and busy agents of ~~the~~ chief, received the stimulative of a French war. Since this event, assuming authority they did not possess, and making promises which they never meant to perform, they have worked upon the needy and the profligate; their labours have been incessant, and the accumulated horrors of the 23d of July last, have been the fruit of those labours.

As in point of law each man who took a part in the insurrection, is guilty of every crime which attended it, as fully as if he had committed them with his own hand, I shall somewhat minutely detail them, as well as state the particular share which the prisoner appears to have taken in these disgraceful occurrences.

It will be manifest to you, from the facts which accompanied the insurrection, as well as from the particular evidence produced, that it was the consequence of a preconcerted conspiracy—It did not proceed from the sudden heat or impetuosity of a mob. It was planned and instigated by persons connected only by their treasons, and related to each other only by their common crime.—Those conspirators who resided in the capital called in aid the profligacy of the adjoining counties, and the insurrection was the consequence of their united efforts.

They assembled about the hour of nine in the evening, and it is material to state, that almost all of them were unarmed. The heads of the conspiracy, or to give them their own title, *The Provisional Government*, had supplied arms in such abundance as to furnish in itself complete evidence of the extent and object of their design, as well as of their
gross

gross miscalculation as to the number of their friends and adherents.

The great depot was in *Mass-lane*, which is frequently called *Marshall's-lane*, and which runs into *Bridgefoot-street*. This street is also frequently called *Dirty-lane*, and I mention these particulars to prevent any confusion in the evidence, as the witnesses may call them indifferently by one name or the other. This depot was protected on one side of *Thomas-street* by the rebel mob, and on the side of the *Liffey* by centinels who stood contiguous to hollow pieces of timber which had been laid across the streets, filled with combustible matter, and ready for immediate explosion.

When the hour came, those persons who were commanded, with one consent, and as moved by one hand, went in a body to this depot, and were there furnished with arms. Having been thus supplied, they returned directly to *Thomas-street*, and were in a short time joined by rebel leaders, who animated them to proceed to attack the Castle. They encouraged each other with the expectation of plunder and pillage; each man seemed resolute that his neighbour should advance, and yet the body did not move forward. By some mistake they all happened to be rear-rank men, and each in looking for his place threw the whole into confusion, they hesitated, they halted, and they retired.

I am sorry, gentlemen, to add, that this feint upon the Castle has given serious alarm to some of our neighbours in England: they knew it was an Irish fortress, and therefore thought it was within an ace of being taken, though it never was within a mile of being attacked.

Thus, gentlemen, this mighty and rebellious mob, who conceived that in a moment they would have seated the provisional government in his Majesty's Castle, did not proceed much further than the Market-house in *Thomas-street*. Their gallant leaders then despairing to get them further towards the Castle, led them on to various objects more congenial to their temper and disposition. Instead of prosecuting their crimes in the bold spirit of their proclamation, they fell upon schemes of assassination, disgraceful to the capital.—They surrounded single and unarmed yeomen and individuals of the military, whom they massacred without mercy or provocation.—Col. Browne, a most deserving officer, much loved in his regiment, and much

much esteemed in the army, was fired upon with blunderbuss and killed upon the spot. One or two unarmed soldiers were murdered in the same barbarous manner.—Cornet Cole was grievously wounded, unprotected individuals every where fell a sacrifice to their fury. But, gentlemen, every colour and pretence of marking men in regimentals as objects of their vengeance fails them, when we come to the lamentable fate of Lord KILWARDEN. Before I proceed to state that transaction, let me call your attention to the Proclamation framed for these insurgents, I read it to shew how little reliance is to be placed upon the act or promises of “*The Provisional Government.*” These are their words, “No man shall be put to death in cold blood. The first prisoners that shall fall into our hands, shall be treated with the respect due to the unfortunate.” They fulfilled that engagement by dragging Lord KILWARDEN from his carriage—and with one voice they called for his immediate execution. And here let me pause to remind you, that up to that moment, the mob, furious as they were, had met no resistance. They had not been more than a few minutes assembled, none of them had been then killed or wounded—they were not pursued or molested—nothing occurred to stimulate their passions or to justify revenge—they were, what they came out from their lurking-places—monsters and not men.—You, gentlemen, all knew that amiable and upright Judge—you know his firm and enlightened mind. A promoter of peace and good order. A lover of his King and of his country. He administered the laws of the land with wisdom and impartiality. He was faithful to the Crown and affectionate to the People. In private life, he was mild and amiable, and in his public or political conduct there was no asperity: and yet, gentlemen, unoffending as he was, they encompassed him with their pikes, and in a moment stabbed him in thirty parts of the body, while he vainly supplicated them for that mercy which they probably had often experienced from him. Not content with inflicting upon him many mortal stabs, they continued to deface his body with unnecessary wounds as if they meant to write their own characters in his blood. That he should have survived an instant seems almost incredible. But Providence withheld him for a little moment that there might be something in death to correspond with the tenor of his life; that he should die

die as he had lived, inculcating the laws of his country.— A magistrate who just before his death saw him in this mangled and afflicting situation exclaimed with an indignation which the circumstance almost excused, that the perpetrators of this horrid deed should in their turn suffer immediate execution, but he raised his head and with the last exertion of his voice desired “ that no man should suffer for his death, but by the laws of his country.” He never spoke again, but with his dying breath has bequeathed to us a noble example of firmness and moderation. I do not wish to seize this occasion to pronounce his eulogy ; but praise must attend him when he is spoken of in the language of truth. It is impossible to relate the circumstances of his death without appearing to record his virtues. Were it my object to transmit him to posterity with the brightest panegyrick, I would gather from his dying lips the last sentence which he uttered, and I would engrave it upon his tomb as an epitaph that should endure for ever.

His unoffending nephew, gentlemen, escaped to a greater distance. He was however met by another party, the same spirit actuated all, and he too fell under innumerable wounds.

Elated as you may suppose such minds must have been with the perpetration of these individual barbarities with impunity, they began to feel a new spirit and resolution. They then resolved to attack—not the King’s forces, not his Majesty’s Castle, but the Marshalsea prison, the few persons in it who were confined for debt were protected by a slender guard—they came upon it by surprise—they shot the corporal and fled in a moment. I should here mention the good conduct of the prisoners, with a discrimination not subdued by their sufferings or their misfortunes, they called for arms to defend themselves, preferring the security of their prison to the anarchy of the mob. They understood freedom too well to suppose it could be the gift of rebellion.

The insurgents afterwards met with Mr. *Wilson* at the head of a few peace officers : he called upon them to disperse ; he wisely calculated that notwithstanding their numbers and their arms, there was more safety in intrepidity than flight ; he fired upon them : he lost one of his men, and was wounded himself ; but as with great gallantry he shot the ruffian who assailed him, he was enabled
with

with his small party to effect his retreat in the confusion of his enemy.

Shortly after, Lieutenant *Brady*, with 40 or 50 men of the 21st regiment came into *Thomas-street*, he fired upon the mob and they fled in all directions leaving several dead. A party from the *Coomb* guard, under the command of Lieutenant *Douglas*, came upon them in another quarter, and dispersed them also. This detachment having come from the *Coomb*, and Mr. *Wilson* having taken his assistants from the Watch-house in *Vicar-street*, the insurgents thought these places were deserted, and that it was possible they might take what it was supposed there was no one to defend. They accordingly attacked the Watch-house, but being resisted, by some old men who remained behind as too decrepid to walk, they abandoned that object, and proceeded to the *Coomb*. By this time however, the detachment under the command of Lieutenant *Douglas* had returned to its post, and the insurgents were surprized to find the King's forces there before them. They however fired a few shots, wounded two men, received three volleys in return, and leaving several dead disappeared I trust for ever. And thus ended the achievements of this intrepid rebellion.

There remained however one fastness which they seemed anxious to preserve; I mean the *depot*, already alluded to. It was observed, that many persons flocked in that direction—that there were centinels about it, and the hollow pieces of timber attracted notice. Captain *Woodward* of the *Bar-rack Division* of yeomanry, and Lieutenant *Caultman* of the 9th Regiment, with a small party, determined to explore it: they accordingly proceeded—they passed the hollow pieces of timber, and observing several hundred Pikes resting perpendicularly against the wall of what appeared to be a malt-house, two privates, with distinguished gallantry, mounted upon those pikes, and standing upon the points of them, ascended an upper window; thus happily using these instruments of rebellion as the means of its detection. Lieutenant *Caultman* by this time procured a ladder and followed with the remainder of his party, and they shortly discovered what sufficiently denoted *Rebellion*:—they found such a quantity of ammunition and instruments of death, as to leave no doubt upon any rational mind, that they were collected for some public design; not for the purpose of any individual, but for such purposes as we attribute

attribute to the prisoner, *Treason and Rebellion*. There were found 36,400 ball-cartridges, several scaling-ladders, grappling-irons, hand-grenades, pikes, rebel uniforms and colours, and what is not the least important, not less than 7 or 8000 proclamations from the Provisional Government. With regard to the pikes, the entire mob which made their appearance, having been supplied from this *depot*, no more remained from discovery than the trifling number of 6 or 8000! And here permit me to observe, that much consolation may be derived from this circumstance, it is manifest, that these conspirators counted without their host; they never made a pike, but in the fond expectation of procuring a hand to direct it. I consider every pike that was found in this *depot* as conclusive evidence of a desertion from their iniquitous banners.

Gentlemen, notwithstanding the horrors of that night, which no man regrets more than I do, yet I think they furnish some ground for reflection, that the people who had been worked into arms from one end of the country to the other in 1798, could not be roused beyond the assemblage of a desperate mob as contemptible in numbers as it was atrocious in disposition. I cannot pass over the proclamation without making a remark or two upon it: every line it contains breathes *Treason and Rebellion*; but I will not descend upon it at length; there are however some passages in it too flattering to be omitted.

After avowing their object to be to overset the government of the country, and to break the connexion with *England*, they state, "that 19 counties will come forward with promptitude to effect it." But five weeks have since elapsed, and not one single county has come forward at their call. The conspiracy seems almost ended where it began; the people are beginning to reason a little with themselves, and to ask each other—What is it possible that we should gain in this contest? It is to be supposed that the *French* will waste their fleets and their armies, that they will incur the dangers and expence of invasion, that they will sacrifice their treasure and their lives for us? A people whom they never saw, with whose manners and language they are utterly unacquainted? Is it possible, that those who plunder and oppress their neighbours, will bring freedom and comfort to a distant land? Can those, *slaves* themselves, impart freedom to others? Is our religion or our morality to be improved by *them*? *Protestants* of all descriptions shrink at

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the approach: the intelligent *Roman Catholics*, equally shun their embrace—he has much liberty to protect and much property to preserve—he has experience to direct him: from within, he sees a licentious rabble, cruel and untrained, whose property is plunder and whose faith is persecution, who would begin by annihilating others, and conclude with trampling upon him. He is equally warned from abroad; he sees that France has uniformly marked its progress through other countries with insult and desolation; that it comes to protect, but that it remains to devour and to pillage. He feels that he could derive neither benefit or satisfaction by transferring the payment of tithes from a protestant Church to an infidel government. He does not suppose that the *French* will establish in Ireland what they have substantially abolished in France; or that they will honour that religion in others which they have degraded amongst themselves. Not only the dignitaries of their church have been humbled and its revenues exhausted, but the supreme head of it, the Pope, is shaken upon his feeble throne. The papal sceptre it is true still continues in his hand; but its operations are insultingly directed by his *Confessant Coadjutor*. All property and all religions are equally interested to resist him—he has disgraced the name of an usurper, and has made tyranny more odious than it was—he has equally deceived his subjects and his allies, and has made universal perfidy the foundation of empire. And yet this is the man to whose tuterally protection our modern reformers are anxious to commit their infant republic: I admit their proclamation in its modesty does not state who is to be their First Consul. But as it speaks of “a greater exertion to be rendered, still greater by *foreign assistance*,” I think it is no extravagant conjecture to presume they intend to borrow him from France, and I am sure it is a guardianship he will not be reluctant to undertake. No, gentlemen; so long as we have a treasury to be plundered, a people to be enslaved, or a religion to be insulted, we may rely upon the untreasing solitudes of his *Consular Highness*; we have seen him extend his cares to other republics than that of France. He has possessed himself of the republic of Italy, he has sold the republic of Venice, he has betrayed the republic of *Switzerland*, and he has plundered the republic of Holland. Is it then surprizing, that nineteen counties have not come forward to implicate their country in the miseries of civil

civil war, in the expectation of raising up another republic in Ireland, to offer at the shrine of his ambition and to swell the bloody catalogue of his crimes. No, I trust, there is too much good sense and good spirit in the people, and that Providence has reserved us for happier destinies. I trust we never shall be driven to seek shelter from France, within whose bosom there is no repose. Her tree of liberty has been long since withered, and under its baneful branches there is no vegetation.

Gentlemen, there is another part of the proclamation to be resorted to, because it shows the dignified moderation of government, under circumstances of provocation, not within the common powers of the human mind to resist. It audaciously states "that the first attempt to execute an individual in one county should be the signal for insurrection in all." But still the justice of the country has pursued its firm and constitutional course in despite of the threats of treason, and uninfluenced by the more painful anxiety of those who were over zealous for its execution. Neither terror upon one side, nor apprehensions upon the other, could alter its progress. It has moved slowly but with a firm and determined step, the law has taken its serene course, undisturbed by the agitations which surrounded it, and government has established its strength in its moderation.

The special commission was not sealed for a fortnight after the insurrection, and near three weeks have elapsed since it issued, so that a full opportunity has been given to the prisoners of an impartial trial. They will have the advantage of legal advice of their own selection, and they will have the further assistance of learned and upright judges, more anxious to see the establishment of his innocence, than to pronounce the punishment of his guilt.— And here let me intreat you, gentlemen of the jury, to imitate the moderation of government, to partake of its temper, and to profit by its example. There are passages in the proclamation of this invisible government, which also call upon you for an exercise of your magnanimity. "All Irish Militia, yeoman or volunteer corps or bodies of Irish individuals, who, fourteen days from the promulgation and date hereof, shall be found in arms, shall be considered as rebels, committed for trial, and their properties confiscated." From what a heated and disor-

dere'd imagination these sentiments must have proceeded? What a silly effusion of arrogance and presumption.

I say, gentlemen, let not this threat move you from your moderation, raise your minds above the insult, and let anger give way to compassion. The fears and conscious guilt of rebellion makes it intemperate and cruel. The authority of government founded in legal right and exercised with justice, retains the calmness and dignified composure of virtue, proceed then in the spirit of a regular government—let not passion be roused into operation—let those who penned this proclamation feel eternal discomfiture, when they find that its principal effect has been to stimulate with new provocations the well tried loyalty and courage of the army, the yeomanry and volunteers of Ireland, they may be provoked, but they cannot be intimidated, faithful in their attachment to the best of kings, their zeal in his service increases in proportion as they find themselves excluded by treason from the pale of its mercy.

Hitherto, gentlemen, I have confined myself to general circumstances, shewing the primary fact, that upon the 23d of *July* last, there existed a rebellious insurrection in the city of *Dublin*. I rely not upon the notoriety of the fact, or the legislative declaration of it; evidence shall be produced before you, establishing it beyond doubt; and having done so, nothing more will be necessary, with regard to the prisoner at the bar, but to shew, that he aided and assisted in it. We will produce witnesses to prove that the prisoner was in *Thomas-street* upon that night, at the head of a party, armed with a *pike*, that he called upon them to come on and encouraged them to assault the king's troops. Thus distinguishing himself as an active leader. If this shall appear in evidence, you will consider it with calmness and deliberation. I have no doubt you will faithfully discharge your duty to the prisoner and your country, I will not anticipate your verdict. If the case should be doubtful, you will be indulgent to the prisoner, if you are called upon for compassion, you will exercise that which embraces the whole body of the people, as well as the narrow circle of the dock. The tranquillity which has succeeded the 23d of *July*, notwithstanding the hopes and predictions of traitors, has enabled you at this day to enter upon the investigation with becoming composure, and to extend to the prisoner the fullest advantages of the British constitution. Gentlemen, I am happy at being able to call

call your attention to the universal tranquillity of our country. The storm has passed over us, and the constitution has survived. Our gracious monarch sits unmoved upon his throne, his sceptre resting upon his people. Contrast your situation with those unhappy countries which have been subjugated by the arms or seduced by the artifices of France, "They are brought down and fallen, but we are risen and stand upright." And may we maintain that proud attitude, until peace and tranquillity shall be restored to Europe; and until that nation which has been so long employed to scourge other countries for their crimes, shall in due time be called upon by the wisdom of Providence to answer for her own.

PATRICK M'CABE, sworn.

Examined by the SOLICITOR GENERAL James U. O'Brien

Q. Where did you live immediately prior to the 23d of July last?

A. In Francis-street.

Q. In what situation in life?

A. I followed the calendering business.

Q. Were you in Thomas-street on the night of the 23d of July last?

A. I was.

Q. Were there numbers of people assembled there?

A. There were.

Q. Did you hear at any time before the 23d of July, that there would be an assembly of the people, or any rising of the people?

A. I did.

Q. Upon what day did you hear of it?

A. On Friday the day before.

Q. I do not mean to ask you to mention any names, or from whom you heard it, but whether you heard what the object of the rising was?

A. Not immediately.

Q. What were you told was to be done?

A. At that time I was not told.

Q. How soon were you told?

A. Next morning.

Q. Where was it you were so told?

A. It was in a field contiguous to the canal.

Q. When

Q. When you were informed there, that there would be a rising, were you informed what they were to do?

A. Partly.

Q. What was it?

Mr. BALL. My Lord, as mere matter of inducement, I agree that it may be fair to examine in this manner; but I trust, no examination will be held respecting conversation at which the Prisoner was not present, and of which he had no information.

Mr. SOLICITOR GENERAL. There is no impropriety in the question.

Q. What were you told was to be done?

Mr. BALL. My Lords, I trust this question will not be persevered in, unless the counsel say, they will afterwards bring it home to the Prisoner.

Lord NORBURY. We are not driven to give an opinion upon this objection, because it is accompanied with a qualification which admits the evidence to be, what it is, mere preliminary matter; the effect of it will be judged of hereafter.

Q. What was the object communicated to you?

A. That the people were to assemble there.

Q. In the field?

A. Yes.

Q. At what hour?

A. Between 8 and 9 o'clock.

Q. When the people were assembled, what was it intended they should do?

A. The first place they were to go to, was to the Barrack at Island Bridge.

Q. Do you mean the Artillery Barracks?

A. I do.

Q. For what purpose?

A. Of course to seize what was in it.

Q. What did they expect to find?

A. Arms and ammunition.

Q. Were there any particular kind of arms there?

A. Not that I could hear of, more than cannon and musquets.

Q. Was there any other place that they were to attack besides that Barrack at Island Bridge?

A. The Magazine at the Park.

Q. What did they expect to get there?

A. Gunpowder.

Q. Was

Q. Was there any other place they were to attack?

A. No, not the party that was to go there.

Q. But was there any other place to be attacked by others?

A. There were several places, by other parties.

Q. Mention them?

A. The chief place that was mentioned was the Castle.

Q. Was there any intention made of the manner, or the side at which the Castle was to be attacked?

A. As nearly as I recollect, it was *Ship-street* side.

Q. Why were they to attack it on that side? Was any reason given?

A. No reason, that I could hear.

Q. Where did you go when you left the field?

A. I did not go to the field.

Q. You were near it?

A. No; not that time.

Q. What passed after this conversation you speak of?

A. It ended there, that time.

Q. That was in the morning?

A. Yes.

Q. Did you meet any of the same persons upon the same day?

A. I did.

Q. Was there any place appointed that you should meet at?

A. There was.

Q. Where.

A. At *Rainford-street*.

Q. Where is that?

A. Near *Crane-street*, in *Thomas-street*.

Q. Was any hour appointed?

A. Yes: nine.

Q. Had you received any arms?

A. I did.

Q. What?

A. A blunderbuss.

Q. At what time did you receive it?

A. At six.

Q. Did you go to *Rainford-street* at the appointed hour?

A. I did.

Q. Did you take the blunderbuss with you?

A. I did.

Q. How

Q. How long did you remain at *Rainsford-street*?

A. About three quarters of an hour.

Q. While you remained there, did any number of people assemble there?

A. They came by that place from different parts.

Q. Which way were they going?

A. Towards *Thomas-street*.

Q. Were any of them armed?

A. Yes; some with *Pikes*.

Q. Were any of them unarmed?

A. Yes; a great many.

Q. Then, the greater number were unarmed?

A. Yes; until they got to *Thomas-street*.

Q. Did you go on with them to *Thomas-street*?

A. I did.

Q. When they got there, what did they do; or did you hear them say any thing?

A. Some of them cried out, and wanted to know where the arms were.

Q. Was any answer given to those who called out?

A. Yes: a man who stood at some distance from me said, "If they went with him, he would get them arms."

Q. Did you call for any thing there?

A. I did.

Q. What did you call for?

A. I said, I had no ammunition for the blunderbuss.

Q. Was any answer given?

A. Yes.

Q. What?

A. A man there said he had some in his pocket, and gave me some.

Q. What did he give you?

A. Ball-cartridge.

Q. How many?

A. About forty.

Q. Did the people follow the man, who said he would get them arms?

A. They did.

Q. Where?

A. Down to *Marshall-alley*: and they turned to the right upon the first turn.

Q. To what street did that lead?

A. To *Dirty-lane*.

Q. Did you accompany them?

A. I did.

Q. What

Q. What passed there?

A. They came to a place where there was a great number of pikes, and every man took up one.

Q. Where were the pikes brought from?

A. I cannot say. They lay across the lane, as if thrown out of a ware-house.

Q. Did you observe any window, or door open from whence they might be thrown?

A. No.—I saw a window, but I do not think they were thrown from it, it was so high.

Q. What did the people do afterwards?

A. They came out into *Dirty-lane*, and from that to *Thomas-street*.

Q. Did you accompany this armed party to *Thomas-street*?

A. I did.

Q. When you got there, what did you first observe this armed mob do?

A. The stopping of a carriage:—it appeared to be a road chaise.

Q. What did they do?

A. They took some boxes and a trunk from it.

Q. Did you observe any person come out?

A. A tall slender man came out.

Q. Did you say any thing upon that?

A. I said it was not *Plunder* we were looking for, but *Liberty*.

Q. After this transaction where did you go?

A. Down to *Vicars-street*, where we stopped.

Q. For what purpose?

A. A party made an attack upon the watchmen to get the watchmen's poles.

Q. Did they succeed in getting any?

A. I believe they did, from what I saw next morning.

Q. Did you see any that night?

A. No.

Q. Where did you proceed to?

A. Across *Francis-street* and *Plunket-street*.

Q. Where then?

A. We returned to the end of *Francis-street*.

Q. What happened there?

A. From the noise we made, the *Coomh-Guard* turned out and fired upon us.

F

Q. What

Q. What was done by your party ?

A. The best part ran away.

Q. Did those who remained do any thing ?

A. I cannot say ; I did not see them do any thing.

Q. What did you do yourself ?

A. I went up *Francis-street* as smart as I could.

Q. What did you do then ?

A. I went towards *Pimlico* and remained there most part of the night.

Q. Where did you go to from that ?

A. When the streets were quiet, I went towards home.

Q. About what hour ?

A. Near one o'clock.

Q. What happened ?

A. I was some time waiting at the door in *Francis-street* to get in, and Mr. *Drury* and a party came up and took me.

Q. Did they get the weapon you had ?

A. They did ; they took the blunderbuss and myself.

Cross-Examined by Mr. BALL.

Q. How long is it since you have been concerned in the business of politics and rebellion in this country ?

A. I cannot say.

Q. Were you in the business of 1798 ?

A. I was concerned in it, but was not out.

Q. You have kept up a correspondence with those people since ?

A. I have.

Q. And often talked of the revival of that business ?

A. It may be so.

Q. You have a pretty general knowledge of the leaders of that rebellion—I do not want to know their names ?

A. Which rebellion do you speak of ?

Q. That of 1798.

A. I have heard of them, but do not know them.

Q. You know the subordinate leaders among them ?

A. I might know a friend and talk to him.

Q. When did you first hear of this last rising ?

A. On *Friday*.

Q. Was that the first time you heard of the rising ?

A. No, I heard rumours to and fro.

Q. Was

Q. Was it very generally known to the common working people of that part of the town?

A. I cannot say it was; but I believe it was not generally known by the lower order.

Q. Do you not believe, that an honest industrious man might not know of it, until the explosion?

A. It is possible.

Q. From the secrecy of the plan, and the smallness of the number, there was little more, excepting a few strangers, than the ordinary concourse of people together on that night?

A. I cannot say.

Q. The common working people followed their ordinary course?

A. I suppose so.

Q. Is it not a common practice to pay journeymen upon Saturday evening?

A. It is.

Q. Do you not believe that Saturday evening was chosen by some of the conspirators, because it was a period, in which journeymen were usually about the streets after receiving their wages?

A. It might be the case, but I did not hear it fixed in that manner.

Q. Was not the object of many concerned in this business to obtain private plunder?

A. I cannot say.

Q. You were apprehensive they were looking for plunder?

A. I mentioned so.

Q. A great number of the body had arms?

A. No arms but *Pikes*.

Q. It did so happen that a great number were mixed among them, who had no *Pikes*?

A. In a very short time they had all *Pikes*.

Q. But at first they had not?

A. They had not.

Q. Will you take upon you to say, that every man whom you saw first, was afterwards armed?

A. Every man who chose might have a *Pike*:—but it is impossible to say as to every man being armed.

Q. Is it not possible, that some men, who were with the party first, might have gone home quietly afterwards?

A. I can-

from the opposite side also walked into that alley, which astonished me.

Q They moved as by a pre-concerted plan ?

A. Yes.

Q Had they any arms ?

A. They had then no arms that I saw.

Q Have you since seen the place where the arms were deposited ?

A. I have. The mob went into *Marshall's-alley* and there is an angle that turns from that lane into *Dirty-lane*.

Q *By the court.* Was there access from that place to where the depot was ?

A. There was.

Q How far was that turn down the alley ?

A. A few yards from the Four Courts *Marshall's*.

Q What did you do ?

A. They had scarcely got down as far as the *Marshall's*, when I heard three shots fired, and I imagined they had attempted to break open the prison, with intent to liberate the prisoners ; I thought so at that time. I knew there was a guard at the *Marshall's*, and I thought the guard would beat them off. I then brought my party down *Dirty-lane*, to attack the mob in the rear, and meet them in their retreat.

Q What happened then ?

A. When I got into *Dirty-lane*, I observed a great number of people about the first public-house on the left hand, I went to the door, and desired them to shut up the door—One fellow made a sudden effort to get out, but I drove him back, and the woman of the house knowing me, (as I had punished her before for keeping improper hours) called out to shut the door, and it was shut. I then proceeded to the lane which leads into *Marshall's-lane*, and to my utter astonishment found myself at the head of a column of men with pikes upon their shoulders, they were moving in a slow manner.

Q Were there many ?

A. The lane was quite full—they were moving regularly, and seemed as if they were waiting for the men in the rear to get arms.

Q How

Q. How many do you suppose there were?

A. I suppose three or four hundred.

Q. There was some time occupied while you were at the public house?

A. A very little.

Q. What did you do then?

A. I found myself so close upon them, that it was impossible to retreat—If I thought I could, perhaps I would have done so—but I thought it best to attack them. I called out (holding a pistol in my hand) that if they did not lay down their arms, I would fire upon them.

Q. Did this produce any effect?

A. They seemed surprised at being accosted in this manner, and seemed to look for the place where the voice came from, and some laid their pikes against a wall—I advanced, and called out again, when a tall man muffled up with a great coat to his chin, and of better appearance than the rest, made a full lunge of his pike at me.

Q. Were you wounded?

A. I was—it struck me in the belly. In the action of his making the thrust, I fired, and he received my shot in the breast; he and his pike fell to the ground. Three or four of the Peace-officers fired, and killed two or three of them, which threw them into some confusion in the front, but they recovered in a very short time—I thought I was killed—I bled an immensity, and retreated towards *Thomas-street*, with my hand upon my wound. The pikemen opened right and left, and left an open-space for some men in the rear to fire upon us, which they did.

Q. Did their fire take place?

A. One of the watchmen whom I saw a few minutes before, was unfortunately killed.

Q. What further passed?

A. When I got to *Thomas-street*, having the cover of a corner house, I halted the Peace-officers, thinking to have another shot at them, but they did not pursue—they only kept up a fire through the street. By the help of the Peace-officers I got down through *Meath-street* to New-market watch-house, upon the *Comb*, and one of the officers went to the *Comb* and *Cork-street* barracks, to apprise the army there. I re-loaded, and then gave the command of the party to an old soldier among the watchmen, and I went through *Black-pitts* to *New-street*, where

where I lived. I called upon Mr. Bell, who had a corporal's guard of soldiers, and he planted centinels upon the road. We took a number of prisoners that night.

Q. You need not mention their names ; but state what more passed ?

A. I continued on duty the whole night, not wishing to be taken in bad.

Cross-Examined by Mr. BETHEL.

Q. This was on a Saturday night ?

A. It was.

Q. You know that Saturday evening is a time, when a number of working people are returning to their employers, bringing their goods and receiving wages ?

A. Yes.

Q. Have you not heard, that some of the working people, returning home, were arrested by the rebels in arms, and forced to join them ?

A. I heard the circumstance of one gentleman ; but did not know it.

Q. Might not that happen to men in an humbler class of life ?

A. It might.

FELIX BRADY, Esq.

Examined by Mr. MAYNE.

Q. What regiment do you belong to ?

A. The 21st, Royal Fusileers.

Q. A Lieutenant, I believe ?

A. Yes, sir, and Adjutant.

Q. Were you, upon any duty on the 23d of July last in the evening ?

A. I was.

Q. Where ?

A. In Thomas Street.

Q. Had you any men under your command that night ?

A. I had between 40 or 50.

Q. Where were they at first ?

A. At Cork-street Barrack.

Q. Had

Q. Had you those men with you upon duty?

A. I was going to acquaint Colonel *Browne*, that there was a mob out in the city, and that our drums had beat to arms.

Q. What hour was this?

A. About half past nine.

Q. Where was his lodging?

A. In *Usher's Island*.

Q. What part of *Thomas-street* did you come to first?

A. The narrow end near *James's-gate*. I came across the Canal.

Q. How came you to bring the party with you?

A. There was a report that soldiers were killing in all directions by the mob, and I brought the men with me to escort Colonel *Browne* to the Barracks, or receive his orders.

Q. What did you first meet, when you came to *Thomas-street*.

A. I met a man with a pike in his hand, in the middle of the street.

Q. Were there any persons with him?

A. No one.

Q. What did you do?

A. I seized him, and he made a great noise; upon which a bottle was flung from a window on the left, among my men; and a shot was fired from an entry on the right, which wounded one of my men.

Q. Is that man living, or dead?

A. He is dead. He died on Saturday last.

Q. What did you observe afterwards?

A. I heard an huzza in my front, and I heard a noise of the feet of men approaching me.

Q. Were there many?

A. I cannot say: it was very dark. There were not a great many huzzaing.

Q. What did you do then?

A. At the time I left *Cork-street* Barrack, I did not make the men prime and load. Having fixed bayonets then, I did not think a mob would attack me; but when the shot was fired, I formed into sub-divisions, and made the men prime and load, and fire from the first sub-division.

Q. Did you observe any thing then?

A. From the light of the firing, I saw men armed with pikes, as I found afterwards they were: they appeared

to me to be white slaves; but I did not know at the time they were pikes. My men kept up an independent fire, and the people fled in all directions.

Q. Did you find any thing afterwards?

A. I found six dead, and one man dying. Two men were taken; and it was reported to me, that they had pikes in their hands, and we got a number of pikes upon the ground.

Q. Is there any person in court who was taken that night?

A. I do not see the man whom I took first.

Q. I do not mean that man. Do you see the Prisoner at the bar?

A. I do: that man was brought to me a prisoner.

Q. How soon after the fire?

A. In about two minutes. He was afterwards brought to General Fox.

Q. There were other prisoners taken that night?

A. There were.

Q. There and about that time?

A. Yes.

Q. Where did you proceed afterwards?

A. After collecting the pikes, my man who had been wounded caught me by the coat, and requested I would give him leave to go to the barracks. He said he was very bad: I said it was dangerous for him to go by himself, and I did not wish to diminish my force by sending a detachment; but that I would bring him to the barrack in *James's-street*.

Q. Did you meet any thing particular afterwards?

A. None; but the events I have told you of.

Q. Did you see any soldier.

A. After I was at *James's-street* barrack, I found a trunk with "*Cornet Cole*" upon it, and a soldier of the 16th Dragoons dying of pike wounds.

Q. Where was that?

A. At the head of *Dirty-lane*.*

Cross-

* This is also called *Bridgefoot-street*.

Cross-Examined by Mr. C. BALL.

Q. Some of the soldiers took this man, and said he had arms?

A. Yes, and they gave me the pike, which it was said was found upon him.

Q. You did not say that upon your direct examination?

A. The question was not asked me.

Q. Where was he brought to?

A. To *James's-street* Guard-house.

Q. Was he searched?

A. I believe he was; but I was not present.

Q. What became of the man who was taken singly by himself?

A. He was brought to General *Fox*, and from that to the *Prevôt*.

Q. Was there any doubt as to the identity of the Prisoner, and that of the first man taken?

A. Some of the soldiers were of opinion, that this man was the first man taken; but that is nothing to my opinion.

Q. When you marched up street, you did not see the first man until you came close to him?

A. Very close; the men marched close and silent.

Q. Did you march upon the flags?

A. No, in the middle of the street.

Q. You had forty men with you?

A. Yes.

Q. Such a number of men make great noise in marching?

A. When men are well disciplined and attentive to the orders they receive, they do not make much noise.

Q. You heard captain *Wilson* examined?

A. Partly.

Q. You heard him say, that he could distinguish them in their frieze coats and with pikes, though that colour is not so conspicuous as red, when there is any confusion?

A. I did not hear that.

Q. Could not the prisoner standing singly by himself, see, before you saw him?

A. It stands to reason, that he might.

Q. Could he not have distinguished your uniform?

A. The night was dark, I do not think he could.

Q. He might have observed you, before you observed him?

A. Ycs.

Q. Suppose him a mere stranger to the transaction, and an innocent man, he could have escaped?

A. From the darkness of the night, and the silence of the men, it is possible he might be surprized.

Q. Do you not think he might have escaped?

A. I rather think not, for I got within a yard of him before he observed me, as I judged by his appearance.

Q. Your men were clothed in scarlet, and had bright arms?

A. Yes.

Q. Could he not, upon perceiving them, escape, as you believe?

A. I have one thing to believe, that he could not escape, as I came upon him.

Q. Do you mean to say, that it was impossible he could escape?

A. I believe that from the time he observed us, he could not escape.

Q. Is it your opinion, that he did not observe your approach, until you came within a yard of him?

A. He might not have observed us, until within a yard of him, and I believe he did not.

Q. Did you charge any person with presenting a pike at you?

A. No; but I charged a man with having a pike in his hand, and he said he found it in the street.

Q. Who was that?

A. I saw him in court this day.

(The Witness was desired not to name him.)

Q. Had you at any moment suspected any other man, besides that man to have presented a pike at you?

A. No other man, from the time I saw him at day light afterwards.

Q. Are any of your men to be examined?

A. There are some here.

Q. At what hour did you charge the man with having a pike in his hand and presenting it at you?

A. I charged no man with presenting a pike at me.

Q. Did you give a person into custody?

A. I did, to the corporal, and he was sent to the Barrack.

Q Did

Q. Did you identify that man afterwards?

A. I did when I saw him in the Guard-house.

Q. How soon after?

A. About 15 minutes after.

Q. Then in about 15 minutes you charged him with having a pike in his hand?

A. I did not know him to be the man who was taken with a pike.

Q. Then there was a difference of opinion?

A. I will explain that—When I was going to General Fox with thirteen prisoners, there was a man making a great noise and kicking up a dust. I asked, was that the rascal I took in *Thomas-street*? The man said it was not.

Q. What noise was he making?

A. He was endeavouring to make his escape, and the soldiers would have killed him, if I had not prevented them. He threw himself down and tossed himself about to get off, he would not come on by any means. This was the man now at the bar.

Q. *By the Jury.* Did he appear to be in liquor?

A. The first man I took was standing still, and said, he was a poor man and had many children; he did not appear to be in liquor.

Q. You did not see any pike in his hand?

A. No, but the soldier brought him and a pike, and said, that was the pike the man had.

Q. *By the Court.* Was that said in the presence of the prisoner?

A. It was.

Q. Did he say any thing upon it?

A. No, he made no answer.

Mr. BALL. What is said by another person, and no answer is made to it by a prisoner, is not evidence against him, unless he makes it evidence, by acting upon it, or adopting it.

Lord NORBURY. It would extremely derogate from the dignity of, these proceedings, to interrupt the trial by arguing a point of this nature.

Mr. ATTORNEY GENERAL. My Lord, I wish to have the matter cleared up. The witness stated that one of the Prisoners said, he found the pike in the street.

Q. Which

Q. Which of them was that?

A. The first man we took was brought before general Fox, and he said, he found the pike in the street.

Q. Was that the prisoner?

A. It was not.

MR. ATTORNEY GENERAL. My Lord, that ascertains the matter; and I am glad, that it has been explained, that the prisoner may have the benefit of it.

Corporal James Stott

Examined by Mr. O'GRADY.

Q. Do you know the prisoner at the bar?

A. I have seen him.

Q. Where did you first see him?

A. In *Thomas-street* on the 23d of *July* last.

Q. Had he any thing in his hand?

A. He had a pike in his hand.

Q. Did he say any thing?

A. He cried out, "Royal Pike-men charge them, here they come."—

Q. How near were they to you?

A. Within a few yards.

Q. Were you near him?

A. I was upon the left of the division.

Q. How soon was he seized?

A. In a moment.

Q. Who seized him?

A. I do not know the man who seized him; but he threw away his Pike, and I assisted and seized him by the throat and put him in front of the division and took him to Adjutant *Brady*, who commanded the division.

Q. By the Court. You are a Corporal in the 21st Regiment?

A. Yes.

Cross-Examined by Mr. BETHEL.

Q. At what hour was this?

A. It was about ten.

Q. Was it moon-light?

A. No, it was not.

Q. Was

Q. Was it dark night?

A. It was.

Q. The second division was in the rear—It was not in the front?

A. No, sir.

Q. You are an old acquaintance of the Prisoner?

A. I never saw him before that night.

Q. Did you ever hear him sing?

A. I never heard him sing or whistle.

Q. Did you ever hear him speak before?

A. No.

Q. Would you take upon you to swear, that he was the person that spoke that night as you have mentioned, being in the dark and never having seen him before?

A. I would, because I heard him afterwards, and I knew his voice again.

Q. Was he not alone,—were there others near him?

A. Not very near him—there were many persons there; he was nearest to me, and I heard him.

Q. Do you not believe, that a man of ordinary description might be pressed into this business?

A. Yes, he might;—but at the same time he could not be forced to call out, “Royal Pike-men charge!”

Q. That is, supposing his was the voice you heard?

A. I am sure he was the man I heard.

Q. What countryman are you?

A. A Scotchman.

Q. Have you not heard that many persons were forced into that rebellion against their consent?

A. I did not hear it.

Q. *By the Court.* As soon as you heard the Prisoner call out, “Charge.” you saw him seized, and he threw away his Pike and he was brought directly to the officer?

A. Yes.

Q. Did you bring the pike?

A. No, I saw him throw away the pike; but whether it was taken up or not, I do not know.

Q. Did you see the pike?

A. I saw it was a pike by the light of our pieces.

Q. Did you ever lose sight of him, from the time you heard him till he was seized?

A. No.

Q. B,

Q. By the Jury. Was it from his voice you heard afterwards, that you knew the Prisoner?

A. No—But he was advanced and nearest to me of any of them.

Q. By the Court.—Was he out of your sight at all from the time he called out, “Charge”—and his being seized?

A. No, one of our men ran out and seized him—he threw away the pike; I took hold of him and placed him between the first and second division, until an opportunity occurred of bringing him before the officer.

Q. By the Jury. Was it a man of the first or second division who seized him?

A. A man of the second division.

Lieutenant BRADY, called again by desire of the Prisoner's Counsel.

Q. I am desired to ask you, whether the prisoner was not taken opposite the Barrack in *James's-street*?

A. No; it was in *Thomas-street*—to the best of my knowledge he was the second man, that was taken—we took no man in *James's-street*.

WHEELER COULTMAN, Esq.

Examined by Mr. TOWNSEND.

Q. You are an officer in the 9th regiment?

A. I am.

Q. Do you remember the 23d of *July* last?

A. I do, sir.

Q. You were in *Dublin* on the recruiting service?

A. I was, sir.

Q. Did you receive any particular information that day?

A. I did.

Q. What was the nature of it?

A. That the city of *Dublin* was to be attacked that night by a band of armed rebels.

Q. Did you take any steps in consequence?

A. I went to general *Dunn* and told him of it.

Q. Did

Q. Did you take any other step?

A. I took a carriage and went to *Finglass*, to Alderman *Crothers*, where my uncle Captain *Woodward* was and told him the same.—On my return, I met a party, who had taken some man with a pike, and I brought it to General *Dunne*, stating, that the business was commenced, for there was a pike. I then desired as many of the Barrack Division to get together as I could.—But they had no arms and could not get any.—There were about nine men.—

Q. Where did you go from that?

A. I went to my own lodgings upon *Arran-quay*, within pistol shot of my uncle's upon *Ellis's-quay*, and remained there some time.—A few of the men of the Barrack Division brought a box of ball-cartridge, which they said they found, and they threw it into my uncle's hall and desired my uncle and I to head them—we then went out.

Q. How many were there?

A. A serjeant and eleven privates of the Barrack Division.—A serjeant and two men of the 9th Regiment, and eight or ten Volunteers in coloured cloaths.

Q. How was this party armed?

A. Three firelocks, two blunderbusses, some pistols and swords.

Q. Where did you go to?

A. To *Bridge-foot-street* otherwise called *Dirty-lane*,

Q. What did you perceive?

A. A large frame of timber across the street.

Q. Was that near *Bonham-street*?

A. It was.

Q. Did you know the use of that frame?

A. I do—I have seen some of them in England, and have seen drawings of them. It was open at each end for a tube, and plugged up tight—it is then filled with ammunition, and by a hole, bored at the top, may be let off, when it explodes, and is calculated to resist cavalry or infantry, and flies in all directions, and does great mischief.

Q. Did you examine the contents?

A. No, I went to remove another, which was across *Bonham-street* and then I went to pursue the Rebels.

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Q. (*By the Court,*) Are you acquainted with machines of that kind?

A. My Lord, I never saw them used, but I saw one in England, and have seen drawings of them, and have learned the use of them.

Q. Did you proceed through *Bonham-street*?

A. Yes.

Q. That led you to *Marshallsea-street*?

A. It led to the *Marshallsea*. On going there, a person asked, "Was there an Officer with us? He was answered, "There was." He then said, the corporal of the guard was shot, and he begged some ammunition, and we gave him a few rounds, not having much to spare.—A serjeant and twelve men of the 38th Regiment came up. He said he was sure the lane near us was full of Rebels, but he was unwilling to attack them, his number being so small. The men called upon me to lead them into the lane.

Q. Is there any cross street between that and *Thomas-street*?

A. I believe not.

Q. Did you perceive any people in the lane?

A. None that I could see—we had a flambeau and a lantern—Upon going into the lane, we found a great number of pikes, apparently thrown from a building, which had the words "Malt Stores," upon the doors of the second story.

Q. Did you see or hear any number of people as you came near the Stores?

A. No, I can't say I did.—The men upon seeing the pikes, gave three cheers, which created some confusion. I went up to a hackney-coach, standing near the pikes, and which had every appearance of being just arrived.

Q. From what circumstances did that appear?

A. From the quick manner in which the horses breathed, their nostrils extended, and their sides puffing.

Q. In what situation were the pikes?

A. They were piled against the wall, with the blunt ends down, and the points up, as if dropped out of the Stores;—they were in such great numbers that no carriage or horse could pass.

Q. What was done there?

A. Mr. *Irwin* and Mr. *Cantrel*, of the Barrack Division, mounted upon the pikes, and got into the Malt-stores. Private *Gallagher*, of the 9th Regiment, followed by

by a ladder which we got, and I followed him — There were four of us entered.

Q. In what direction were the horses heads ?

A. They were turned towards the Marshalsea, and certainly were drove in from *Dirty-lane*—they could not turn in the lane where they were.

Q. When you entered that Store, what did you perceive ?

A. When I got in, I found a bundle of remarkable good flints of excellent manufacture.

Q. (*By the Court*) Had you any light ?

A. Not at first when I got up, but I got a lantern afterwards.

The next thing I discovered was a great quantity of ball-cartridge — When I discovered that, I exclaimed that there was ammunition for 10,000 men—they were made up in parcels of 20 each. There were at least, 30,000 rounds, I saw a great number of hand-grenades lying on the floor.

Q. Describe to the Jury what were the nature of those hand-grenades, and the uses of them.

A. They were made of short bottles, like ink-bottles, filled with powder, enclosed with canvass and buck-shot, and then covered with clay. I saw also a quantity of what I called bottle-shot, the size of Champaign bottles

Q. (*By the Court*) Can you say how many ?

A. I cannot now, there was a great number.

Q. Did you examine any of them ?

A. I did ; they were enclosed with strong canvass and tow, with twelve musket balls round each bottle, and the bottle itself was filled with powder. I found a great number of Proclamations, quite wet from the press ; they were stiled, " From the Provisional Government."

Q. Of what size ?

A. The size of that—(one was produced, being upon a large sheet of paper)—and I got a number of small ones.

Q. How many were there,

A. I cannot say exactly.

Q. What do you mean by their being "quite wet ?"

A. There are different degrees of moisture ;—they were as if they had been rubbed over with a paste brush—as wet as I have seen a newspaper just delivered out.

Q. Was the place wet?

A. Not that I saw: every thing else was dry, the powder was dry.

Q. How many bundles of the large proclamation were there?

A. I saw three in the room where I was, and the men said they got four in another.

Q. How thick was each bundle?

A. Near two feet.—I mistook them for bundles of linen, they were so large.

Q. Were they folded?

A. There was one folded and tied.

Q. Then probably there were some thousands.

A. Positively, there were some thousands.

Q. How many small ones?

A. Not so many.

Q. What was done afterwards?

A. I then got the lantern, got up a bench and then descended by a sort of ship ladder into another room. I there found pieces of white kerfimer, such as small-clothes and pantaloons are made of, some green uniforms with white edging, and a place, as if persons had slept there.—One coat was very fully trimmed with gold-lace, and there was a large military cocked hat—there were several flags—not very military, but of that nature; they were green with white edging.—I found a quantity of loose powder upon the floor.—I cannot say how much, but I trod upon it, and it encircled my shoes nearly up to my ankles.—I do not know whether my shoe reached the floor.—I saw boxes of ball-cartridge and boxes of powder also.

Q. Were there any pikes there?

A. We found them behind a narrow partition, when day-light came; it seemed to extend some yards from the original wall, and appeared to be newly built, a brick thick.

Q. Was it pulled down?

A. It was, and behind it was found a great number of pikes.

Q. Was there any passage through this partition?

A. I had gone through it when I went by the ladder, as I mentioned before.

Q. How many pikes were there?

A. I cannot exactly say.

Q. Were there 10,000?

A. I think not

Q. Were

Q. Were there 7,000?

A. I think there might altogether. I judge from this circumstance.—We cut off the body of the hackney coach and filled the carriage part three times with pikes, and there were seven car loads besides. When I had got upon another floor, where I found a great quantity of powder lying loose, I apprehended that some danger might happen from the caudle or the snapping of a firelok, and I ordered the people out, and then went down myself. When I got upon the lower floor, I found a great quantity of bread, fresh and hot from the oven—they were in baskets, and the baskets all full—there were about twelve baskets, and each might contain twenty loaves. On first coming up to the stores, I discovered a hogshhead of malt liquor near the coach, and I made the serjeant run his halbert into the head of it, for fear the men should drink, and apprehending an attack, I could not answer for the consequence.

Q. What did you do afterwards?

A. Being informed, that the place belonged to a Mr. Coleman, I went with some men and took him, and gave him to Alderman Darley.—I sent for a reinforcement, and Captain Gordon and a party of the 21st came, and I gave the stores up to him.

This witness was not cross examined.

Serjeant Thomas Rice.

Examined by Mr. ATTORNEY GENERAL.

Q. Were you upon any service on the evening of the 23d of July last.

A. I was with Lieutenant Coulman, my officer.

Q. Did you go into any house?

A. We went into stores in *Marshall-lane*.

Q. Do you mean the place leading into *Dirty-lane*?

A. I do.

Q. What did you see there?

A. I brought out a bundle of proclamations.

Q. Is that one of them? (producing one.)

A. It is; I wrote my name upon it, and put a private mark; there it is.

Q. There were others?

A. There were a great many: but that is the only one I took.

Q. Where the others of the same kind?

A. I believe so.

Q. Did

Q. Did you find this one by itself ?

A. No, I took it off a bundle, for my own curiosity.

Q. Do you know what grappling irons and scaling ladders are ?

A. I do.

Q. Did you see any that night ?

A. I did, I saw ladders and irons for fastening to walls.

Mr. Attorney GENERAL. It would only be a repetition of what the former witness said, to examine this man any farther.

The Proclamation was then read.

The Provisional Government

TO

THE PEOPLE OF IRELAND.

YOU are now called on to shew to the world that you are competent to take your place among nations, that you have a right to claim their recognizance of you, as an independent country, by the only satisfactory proof you can furnish of your capability of maintaining your independence, your wresting it from England with your own hands.

In the developement of this system, which has been organized within the last eight months, at the close of internal defeat and without the hope of foreign assistance ; which has been conducted with a tranquillity, mistaken for obedience ; which neither the failure of a similar attempt in England has retarded, nor the renewal of hostilities has accelerated ; in the developement of this system you will shew to the people of England, that there is a spirit of perseverance in this country, beyond their power to calculate or to repress ; you will shew to them that as long as they think to hold unjust dominion over Ireland, under no change of circumstances can they count on its obedience ; under no aspect of affairs can they judge of its intentions ; you will shew to them that the question which it now behoves them to take into serious and instant consideration, is not, whether they will resist a separation, which it is our fixed determination to effect, but whether or not, *they will drive us beyond separation* ; whether they will by a sanguinary resistance

sistance create a deadly national antipathy between the two countries, or whether they will take the only means still left, of driving such a sentiment from our minds, a prompt, manly, and sagacious acquiescence in our just and unalterable determination.

If the secrecy with which the present effort has been conducted, shall have led our enemies to suppose that its extent must have been partial, a few days will undeceive them. That confidence, which was once lost, by trusting to external support, and suffering our own means to be gradually undermined, has been again restored. We have been mutually pledged to each other, to look only to our own strength, and that the first introduction of a system of terror, the first attempt to execute an individual in one county, should be the signal of insurrection in all. We have now, without the loss of a man, with our means of communication untouched, brought our plans to the moment when they are ripe for execution, and in the promptitude with which nineteen counties will come forward at once to execute them, it will be found that neither confidence nor communication are wanting to the people of Ireland.

In calling on our countrymen to come forward, we feel ourselves bound, at the same time, to justify our claim to their confidence by a precise declaration of our own views. We therefore solemnly declare, that our object is to establish a free and independent republic in Ireland: that the pursuit of this object we will relinquish only with our lives: that we will never, unless at the express call of our country, abandon our post, until the acknowledgment of its independence is obtained from England; and that we will enter into no negotiation (but for exchange of prisoners) with the government of that country while a British army remains in Ireland. Such is the declaration which we call on the people of Ireland to support—And we call first on that part of Ireland which was once paralyzed by the want of intelligence, to shew that to that cause only was its inaction to be attributed; on that part of Ireland which was once foremost, by its fortitude in suffering; on that part of Ireland which once offered to take the salvation of the country on itself; on that part of Ireland where the flame of liberty first glowed; we call upon the NORTH to stand up and shake off their slumber and their oppression.

MEN

MEN OF LEINSTER, STAND TO YOUR ARMS.

To the courage which you have already displayed, is your country indebted for the confidence which it now feels in its own strength, and for the dismay with which our enemies will be overwhelmed when they shall find this effort to be universal. But men of Leinster, you owe more to your country than the having animated it by your past example; you owe more to your own courage, than the having obtained by it a protection. If six years ago, when you rose without arms, without plan, without co-operation, with more troops against you alone, than are now in the country at large; you were able to remain for six weeks in open defiance of the government, and within a few miles of the capital, what will you not now effect, with that capital, and every other part of Ireland ready to support you? But it is not on this head that we have need to address you. No: we now speak to you, and through you, to the rest of Ireland, on a subject, dear to us even as the success of our country,—its honour. You are accused by your enemies of having violated that honour; excesses which they themselves had in their fullest extent provoked, but which they have grossly exaggerated, have been attributed to you. The opportunity of vindicating yourselves by actions is now for the first time before you; and we call upon you to give the lie to such assertions; by carefully avoiding every appearance of plunder, intoxication, or revenge; recollecting that you lost Ireland before, not from want of courage, but from not having that courage rightly directed by discipline. But we trust that your past sufferings have taught you experience, and that you will respect the declaration which we now make, and which we are determined by every means in our power to enforce.

The nation alone possesses the right of punishing individuals; and whosoever shall put another person to death, except in battle, without a fair trial by his country, is guilty of murder. The intention of the provisional government of Ireland, is to claim from the English government, such Irishmen as have been sold or transported by it for their attachment to freedom; and for this purpose, it will retain as hostages, for their safe return, such adherents of that government as shall fall into its hands. It therefore calls upon the people to respect those hostages, and to recollect that

that in spilling their blood, they would leave their own countrymen in the hands of their enemies.

The intention of the provisional government is to resign its functions as soon as the nation shall have chosen its delegates; but in the mean time it is determined to enforce the regulations hereunto subjoined:—It in consequence takes the property of the country under its protection, and will punish with the utmost rigour any person who shall violate that property, and thereby injure the present resources and the future prosperity of Ireland.

Whoever refuses to march to whatever part of the country he is ordered, is guilty of disobedience to the government; which alone is competent to decide in what place his services are necessary; and which desires him to recollect; that in whatever part of Ireland he is fighting, he is still fighting for its freedom,

Whoever presumes, by act or otherwise, to give countenance to the calumny propagated by our enemies, that this is a religious contest, is guilty of the grievous crime of belying the motives of his country. Religious disqualification is but one of the many grievances of which Ireland has to complain. Our intention is to remove not that only, but every other oppression under which we labour. We fight, that all of us may have our country, and that done—each of us shall have his religion.

We are aware of the apprehensions which you have expressed, that in quitting your own counties, you leave your wives and children in the hands of your enemies; but on this head have no uneasiness. If there are still men base enough to persecute those who are unable to resist, shew them by your victories that we have the power to punish, and by your obedience, that we have the power to protect; and we pledge ourselves to you, that these men shall be made to feel, that the safety of every thing they hold dear depends on the conduct they observe to you. Go forth then with confidence, conquer the foreign enemies of your country, and leave to us the care of preserving its internal tranquillity; recollect, that not only the victory, but also the honour of your country, is placed in your hands; give up your private resentments, and shew to the world, that the Irish are not only a brave, but also a generous and forgiving people.

MEN OF MUNSTER AND CONNAUGHT

You have your instructions; we trust that you will execute them. The example of the rest of your countrymen is now before you; your strength is unbroken—five months ago you were eager to act without any other assistance.—We now call upon you to shew what you then declared you only wanted the opportunity of proving, that you possess the same love of liberty and the same courage with which the rest of your countrymen are animated.

We now turn to that portion of our countrymen whose prejudices we had rather overcome by a frank declaration of our intentions, than conquer their persons in the field; and in making this declaration, we do not wish to dwell on events, which, however they may bring ten-fold odium to their authors, must still tend to keep alive in the minds both of the instruments and victims of them, a spirit of animosity which it is our wish to destroy. We will therefore enter into no detail of the atrocities and oppression which Ireland has laboured under during its connexion with England; but we justify our determination to separate from that country on the broad historical statement, that during six hundred years she has been unable to conciliate the affections of the people of Ireland; that during that time, five rebellions were entered into to shake off the yoke; that she has been obliged to resort to a system of unprecedented torture in her defence; that she has broken every tie of voluntary connexion by taking even the name of independence from Ireland, through the intervention of a parliament notoriously bribed, and not representing the will of the people; that in her vindication of this measure she has herself given the justification of the views of the United Irishmen, by declaring in the words of her ministers, “That Ireland never had, and never could enjoy under the then circumstances the benefit of British connexion; that it necessarily must happen when one country is connected with another, that the interests of the lesser will be borne down by those of the greater.” That England had supported and encouraged the English colonists in their oppression towards the natives of Ireland; that Ireland had been left in a state of ignorance, “rudeness and barbarism, worse in its effects, and more degrading in its nature, than that in which it was found

“ six centuries before†.” Now to what cause are these things to be attributed? Did the curse of the Almighty keep alive a spirit of obstinacy in the Irish people for six hundred years? Did the doctrines of the French revolution produce five rebellions? Could the misrepresentations of ambitious and designing men drive from the mind of a whole people the recollection of defeat, and raise the infant from the cradle with the same feelings with which his father sunk into the grave? Will this gross avowal, which our enemies have made of their own views, remove none of the calumny that has been thrown upon ours?—Will none of the credit which has been lavished upon them, be transferred to the solemn declaration which we now make in the face of God and our country. We war not against property—We war against no religious sect—We war not against past opinions or prejudices—We war against English dominion. We will not however deny, that there are some men, who, not because they have supported the government of our oppressors, but because they have violated the common laws of morality, which exist alike under all or under no government; have put it beyond our power to give to them the protection of a government. We will not hazard the influence we may have with the people, and the power it may give us of preventing the excesses of revolution, by undertaking to place in tranquillity the man who has been guilty of torture, free quarters, rape and murder, by the side of the sufferer or their relations; but in the frankness with which we warn these men of their danger, let those who do not feel that they have passed this boundary of mediation count on their safety.

We hoped for the sake of our enemies to have taken them by surprise, and to have committed the cause of our country before they could have time to commit themselves against it; but though we have not altogether been able to succeed, we are yet rejoiced to find that they have not come forward with promptitude on the side of those who have deceived them, and we now call on them before it is yet too late, not to commit themselves further against a people they are unable to resist, and in support of a government, which, by their own declaration, has forfeited its claim to their allegiance.

† Consideration on the state of affairs in Ireland, by Lord Auckland.

To that government in whose hands, though not the issue, at least the features in which the present contest is to be marked, are placed, we now turn. How is it to be decided? is open and honourable force alone to be resorted to, or is it your intention to employ those laws which custom has placed in your hands, and to force us to employ the law of retaliation in our defence?

Of the inefficacy of a system of terror, in preventing the people of Ireland from coming forward to assert their freedom, you have already had experience. Of the effect which such a system will have on our minds in case of success, we have already forewarned you.—We now address to you another consideration.—If the question which is now to receive a solemn, and we trust final decision, if we have been deceived, reflection would point out that conduct should be resorted to which was the best calculated to produce conviction on our minds. What would that conduct be? It would be to shew to us that the difference of strength between the two countries is such, as to render it unnecessary for you to bring out all your force; to shew to us that you have something in reserve wherewith to crush hereafter, not only a greater exertion on the part of the people, but a greater exertion, rendered still greater by foreign assistance: It would be to shew to us, that what we have vainly supposed to be a prosperity growing beyond your grasp, is only a partial exuberance requiring but the pressure of your hand to reduce it into form. But for your own sake do not resort to a system, which while it increased the acrimony of our minds, would leave us under the melancholy delusion that we had been forced to yield, not to the sound and temperate exertions of superior strength, but to the frantic struggles of weakness concealing itself under desperation. Consider also that the distinction of rebel and enemy is of a very fluctuating nature; that during the course of your own experience you have already been obliged to lay it aside; that should you be obliged to abandon it towards Ireland you cannot hope to do so as tranquilly as you have done towards America, for in the exasperated state to which you have raised the minds of the Irish people; a people whom you profess to have left in a state of barbarism and ignorance, with what confidence can you say to that people, “ while the advantage of “ cruelty lay upon our side, we slaughtered you without “ mercy, but the measure of our own blood is beginning
“ to

“ to preponderate, it is no longer our interest that this bloody system should continue, shew us then that forbearance which we never taught you by precept or example, lay aside your resentments, give quarter to us, and let us mutually forget that we never gave quarter to you.” Cease then, we entreat you, uselessly to violate humanity, by resorting to a system inefficacious as an instrument of terror, inefficacious as a mode of defence, inefficacious as a mode of conviction, ruinous to the future relations of the two countries in case of our success, and destructive of those instruments of defence which you will then find it doubly necessary to have preserved unimpaired.——But if your determination be otherwise, hear ours.——We will not imitate you in cruelty; we will put no man to death in cold blood, the prisoners which first fall into our hands shall be treated with the respect due to the unfortunate; but if the life of a single Irish soldier is taken after the battle is over, the orders thenceforth to be issued to the Irish army are neither to give or take quarter. Countrymen, if a cruel necessity forces us to retaliate, we will bury our resentment in the field of battle, if we are to fall, we will fall where we fight for our country—Fully impressed with this determination, of the necessity of adhering to which past experience has but too fatally convinced us; fully impressed with the justice of our cause which we now put to issue, we make our last and solemn appeal to the sword and to Heaven; and as the cause of Ireland deserves to prosper, may God give it victory.

Conformably to the above Proclamation, the Provisional Government of Ireland decree as follows :

1. From the date and promulgation hereof, tithes are forever abolished, and church lands are the property of the nation.
2. From the same date, all transfers of landed property are prohibited, each person, holding what he now possesses, on paying his rent until the national government is established, the national will declared, and the courts of justice organized.
3. From the same date, all transfer of bonds, debentures, and all public securities, are in like manner and form forbidden, and declared void, for the same time, and for same reasons.

4. The

4. The Irish generals commanding districts, shall seize, such of the partizans of England as may serve for hostages, and shall apprise the English commander opposed to them, that a strict retaliation shall take place if any outrages contrary to the laws of war shall be committed by the troops under his command, or by the partizans of England in the district which he occupies.
5. That the Irish generals are to treat (except where retaliation makes it necessary) the English troops who may fall into their hands, or such Irish as serve in the regular forces of England, and who shall have acted conformably to the laws of war, as prisoners of war; but all Irish militia, yeomen, or volunteer corps, or bodies of Irish, or individuals, who fourteen days from the promulgation and date hereof, shall be found in arms, shall be considered as rebels, committed for trial, and their properties confiscated.
6. The generals are to assemble court-martials, who are to be sworn to administer justice; who are not to condemn without sufficient evidence, and before whom all military offenders are to be sent instantly for trial.
7. No man is to suffer death by their sentence, except for mutiny; the sentences of such others as are judged worthy of death, shall not be put in execution until the provisional government declares its will, nor are court-martials on any pretext to sentence, nor is any officer to suffer the punishment of flogging, or any species of torture to be inflicted.
8. The generals are to enforce the strictest discipline, and to send offenders immediately before court-martials, and are enjoined to chase away from the Irish armies all such as shall disgrace themselves by being drunk in presence of the enemy.
9. The generals are to apprise their respective armies, that all military stores, arms, or ammunition, belonging to the English government, be the property of the captors and the value is to be divided equally without respect to rank between them, except that the widows, orphans, parents, or other heirs of such as gloriously fall in the attack, shall be entitled to a double share.
10. As the English nation has made war on Ireland, all English property in ships or otherwise, is subject to the same rule, and all transfer of them is forbidden and declared

clared void, in like manner as it is expressed in Nos. 2 and 3.

11. The generals of the different districts are hereby empowered to confer rank up to colonels inclusive, on such as they conceive to merit it from the nation, but are not to make more colonels than one from fifteen hundred men, nor more Lieutenant-Colonels than one for every thousand men.
12. The generals shall seize on all sums of public money in the custom-houses in their districts, or in the hands of the different collectors, county treasurers, or other revenue officers, whom they shall render responsible for the sums in their hands. The generals shall pass receipts for the amount, and account to the provisional government for expenditure.
13. When the people elect their officers up to the colonels, the general is bound to confirm it—no officer can be broke but by sentence of a court-martial.
14. The generals shall correspond with the provisional government, to whom they shall give details of all their operations, they are to correspond with the neighbouring generals to whom they are to transmit all necessary intelligence, and to co-operate with them.
15. The generals commanding in each county shall as soon as it is cleared of the enemy, assemble the county committee, who shall be elected conformably to the Constitution of United Irishmen, all the requisitions necessary for the army shall be made in writing by the generals to the committee, who are hereby empowered and enjoined to pass their receipts for each article to the owners, to the end that they may receive their full value from the nation.
16. The county committee is charged with the civil direction of the county, the care of the national property, and the preservation of order and justice in the county; for which purpose the county committees are to appoint a high-sheriff, and one or more sub-sheriffs to execute their orders, a sufficient number of justices of the peace for the county, a high and a sufficient number of petty constables in each barony, who are respectively charged with the duties now performed by these magistrates.
17. The county of Cork on account of its extent, is to be divided conformably to the boundaries for raising the militia

militia into the counties of north and south Cork, for each of which a county constable, high-sheriff and all magistrates above directed are to be appointed.

18. The county committee are hereby empowered and enjoined to issue warrants to apprehend such persons as it shall appear, on sufficient evidence perpetrated murder, torture, or other breaches of the acknowledged laws of war and morality on the people, to the end that they may be tried for those offences; so soon as the competent courts of justice are established by the nation.

19. The county committee shall cause the sheriff or his officers to seize on all the personal and real property of such persons, to put seals on their effects, to appoint proper persons to preserve all such property until the national courts of justice shall have decided on the fate of the proprietors.

20. The county committee shall act in like manner with all state and church lands, parochial estates, and all public lands and edifices.

21. The county committee shall in the interim receive all the rents and debts of such persons and estates, and shall give receipts for the same; shall transmit to the provisional government an exact account of their value, extent and amount, and receive the directions of the provisional government thereon.

22. They shall appoint some proper house in the counties where the sheriff is permanently to reside, and where the county committee shall assemble; they shall cause all the records and papers to be there transferred, arranged and kept, and the orders of government are there to be transmitted and received.

23. The county committee is hereby empowered to pay out of these effects, or by assessment, reasonable salaries for themselves, the sheriff, justices, and other magistrates, whom they shall appoint.

24. They shall keep a written journal of all their proceedings, signed each day by the members of the committee, or a sufficient number of them, for the inspection of government.

25. The county committee shall correspond with government on all the subjects with which they are charged, and transmit to the general of the district such information as they may conceive useful to the public.

26. The county committee shall take care that the state prisoners, however great their offences, shall be treated with humanity, and allow them a sufficient support to the end that all the world may know, that the Irish nation is not actuated by the spirit of revenge, but of justice.
27. The provisional government, wishing to commit as soon as possible the sovereign authority to the people, direct that each county and city shall elect, agreeably to the constitution of United Irishmen, representatives to meet in Dublin, to whom the moment they assemble, the provisional government will resign its functions; and without presuming to dictate to the people, they beg to suggest, that for the important purpose to which these electors are called, integrity of character should be the first object.
28. The number of representatives being arbitrary, the provisional government have adopted that of the late house of commons, three hundred; and according to the best return of the population of the cities and counties, the following numbers are to be returned from each:—
 Antrim 13—Armagh 9—Belfast town 1—Carlow 3—
 Cavan 7—Clare 8—Cork county, north 14—Cork co. south 14—Cork city 6—Donnegal 10—Down 16—
 Drogheda 1—Dublin county 4—Dublin city 14—Fermanagh 5—Galway 10—Kerry 9—Kildare 4—Kilken-
 ny 7—King's county 6—Leitrim 5—Limerick co. 10—
 Limerick city 3—Londonderry 9—Longford 4—Louth 4—
 Mayo 12—Meath 9—Monaghan 9—Queen's co. 6—
 Roscommon 8—Sligo 6—Tipperary 13—Tyrone 14—
 Waterford county 6—Waterford city 2—Westmeath 5—
 Wexford 9—Wicklow 5.
29. In the cities the same sort of regulations as in the counties shall be adopted. The city committee shall appoint one or more sheriffs, as they think proper, and shall take possession of all the public and corporation properties in their jurisdiction, in like manner as is directed for counties.
30. The provisional government strictly exhort and enjoin all magistrates, officers, civil and military, and the whole of the nation, to cause the laws of Morality to be enforced and respected; and to execute, as far as in them lies, justice with mercy, by which alone liberty can be established, and the blessings of divine providence secured.

Richard Cawley.

Examined by Mr. SOLICITOR GENERAL.

Q. You are a Constable of the Watch?

A. Yes, sir.

Q. In what parish?

A. St. Catherine.

Q. Where is your watch-house?

A. In *Near's-street*.

Q. Were you there on the 23d of *July* last?

A. I was.

Q. Was it attacked that evening?

A. It was, twice.

Q. Do you recollect any wounded person being carried there that evening?

A. Yes, Lord KILWARDEN, as he said himself and as it appeared afterwards. We were afraid at first to open the door, thinking it was a decoy—but when he said he was Lord KILWARDEN, we let him in.—We got some blankets and sheets and a pillow, and put him upon them.

Q. Was he wounded?

A. He was very much, and about the head; he was bleeding very much.

Q. Did any person come in?

A. Major *Swan* came in and said, "The villains should be hanged."—His Lordship desired him "Not to hang them, but to give them the benefit of the law and a trial."—Something to that effect.—In the state we were in, I do not exactly remember the words.

Q. How soon did he die afterwards?

A. In a few minutes.

This Witness was not cross-examined.

Lord NORBURY. I do not see, Mr. Attorney General, how you can make this evidence, unless you can connect it in some manner, by shewing the cause of his death.

Mr. ATTORNEY GENERAL. My Lord, we will prove how he came by the wounds which were the cause of his death.

Stewart

Stewart Hume Douglas, Esq.

Examined by Mr. PLUNKET:

Q. Are you an officer in his Majesty's service?

A. Yes, a Lieutenant in the 2nd regiment.

Q. Where were you stationed upon the 23^d of July last?

A. At the barrack on the *Coombe*.

Q. Did any thing particular happen to you upon the evening of that day?

A. About ten o'clock that evening, the rebels came in a great body, and made a charge upon my men.—Three of them came first, and fired at my party, by which two were wounded. I fired upon the rebels and I heard the voice of some person urging them to move forward.—They did not seem to wish it, upon which I gave them another volley,—they retreated, and I gave them a third volley as they turned the corner of *Francis-street*,—for they all made off through *Francis-street*.

Q. What guard was this?

A. The *Coombe* guard—there is a barrack there for a company.

Q. At what hour was this?

A. About a quarter past ten.

Q. Did you find any thing after this?

A. We found fifteen pikes and four men dead upon the ground.

Mr. ATTORNEY GENERAL, My Lord, this Gentleman behaved with great steadiness and gallantry in *Thomas-Street*, in a previous part of that evening—but were I to go into a detail of his conduct it would be only going over the same ground.—We therefore think it unnecessary to examine him further upon the present occasion.

This Witness was not cross-examined.

Thomas Maarsbeek.

Examined by Mr. MAYNE.

Q. Pray, sir, were you in any employment with Lord KILWARDEN?

A. I was, sir.

Q. In what employment?

A. I was postillion with him.

Q. Did

Q. Did you drive his carriage on the night of the 23d of July last?

A. I did.

Q. From *Newlands* his country house until you came to town?

A. I did.

Q. Who were in the carriage?

A. My Lord and Mr. RICHARD WOLFE and Miss WOLFE.

Q. I believe Mr. RICHARD WOLFE was his Lordship's nephew and a clergyman?

A. He was.

Q. About what time did you get to town?

A. About half past nine.

Q. In what part of the town did you first see any persons in arms?

A. In *Thomas-Street*.

Q. Was that at the time you mention, at half past nine?

A. It was.

Q. Was it then dark?

A. Not quite dark.

Q. What did you first see of armed men?

A. I saw different men come out of houses.—I thought at first they were the watchmen going to their stands.

Q. Were there many?

A. Not many at first—only two or three together.

Q. You met with nothing particular till that time?

A. No.

Q. Did they do any thing to the carriage?

A. Not till it was stopped.

Q. Were there many about it then?

A. A great many.

Q. Had they arms?

A. They had.

Q. What arms had they?

A. I saw pikes, and pistols, and blunderbusses.

Q. Can you judge of the number of persons?

A. I cannot.

Q. Were there many?

A. A great many.

Q. More than you could count?

A. There was.

Q. And

Q. And they had arms of the kind you mention?

A. They had.

Q. Did they know who was in the carriage?

A. Yes,—part of them stood at the horses' heads, and another part opened both the carriage doors, and when the doors were opened, they said they had Lord KILLWARREN.

Q. Did you hear him say any thing?

A. No, but some of them said, there was a lady in the carriage, and that they would spare her. They took her out and bid her go about her business.

Q. Was she permitted to go without personal injury?

A. She was.

Q. Did you hear any thing pass between his Lordship and the mob?

A. Something passed—he was not willing to come out of the carriage—but there was such a number about the carriage and they would not permit me to look behind, that I could not hear what they said.

Q. What then happened?

A. After some little time they dragged his Lordship out and stabbed him and struck him on the head.

Q. Did you hear him say any thing?

A. I heard him call for mercy.

Q. Were there many?

A. A great many—more than could get near him; they were fighting to see who would get most blows at him.

Q. Did he fall there?

A. He did.

Q. Did you see him fall?

A. I did.

Q. Did you see Mr. WOLFE?

A. I saw nothing of him from the time I saw him run from the carriage, till I saw him next morning dead.

Q. You saw him run?

A. I did.

Q. Was he pursued by men with pikes?

A. He was.

Q. You saw him dead next morning?

A. I did.

Q. You were suffered to drive off the carriage?

A. I was.

Mr. ATTORNEY GENERAL. My Lord we close the case here on the part of the crown.

Mr. BALL.

Mr. BALL.

My Lords, and Gentlemen of the Jury:

By the peculiar indulgence of the law of this country, the Prisoner is entitled, upon this trial, for the highest crime known to the law, to the advantage of having counsel to state his case and argue upon it. However likely the Prisoner is in this particular instance, not to derive advantage from that indulgence, I think he does not much stand in need of it upon this occasion; for though it were possible for him to have selected a less humble advocate than myself, I feel that he does not require the superior talents of the gentlemen on the other side to defend him; because he has had advantages during the progress of the trial greater and more important to him, than the abilities of the first advocate at the bar.

Gentlemen, the reason why the law gives to persons charged with High Treason the peculiar indulgence of advocates to defend them is, because the crime is of such a nature, that it may in some instances draw down upon the party accused, the peculiar resentment of government and the ministry; and also because in every instance it must excite in the minds of the hearers, extreme and extraordinary feelings of animosity and indignation. In order, therefore, to protect the prosecuted party, as far as can be, from that resentment of the government, and to guard him against unfavourable impressions in the minds of the Jury, a special act of parliament was passed to give him the benefit of counsel.

Gentlemen, I feel in the present instance, and I am bound to confess, that neither of these reasons appear, nor can be supposed to exist. The conduct of the government of this country ever since the lamentable period so often alluded to, has demonstrated the purest spirit of mildness and mercy. Instead of bringing the Prisoner to a tribunal of this kind, the government under the circumstances which were stated and partly proved, might have brought him before a tribunal, where the investigation of his guilt or innocence would have been much shorter indeed—where the principles of evidence would not be much attended to—where deliberation would not govern the proceedings—and where he could not have had any of the advantages which he now enjoys.

Gentlemen,

Gentlemen, the government in this instance, which I hope will be followed, by thus exercising the jurisdiction of the law, in its ordinary course, have given you an example of moderation, which I trust you will adopt, as well as the lesson which was given by a venerable person, whose absence I lament as much as any person can, with a calmness of mind, which has never been equalled under such circumstances, he entreated, "Let them not fall in wrath, in haste, or in anger, but by the established rules of law." By those rules, I have no doubt, but the Prisoner will be tried.

Gentlemen, his Majesty's Attorney General, in the outset of this case, gave you a precaution highly becoming him and his situation, though it was not a necessary part of his official duty,—That you should discharge from your minds entirely every thing you had heard before you came into the box. He might have added, and I am sure he intended, that you should also discharge from your minds entirely every thing which might be stated, if not proved in evidence. He might even have gone further and have added, what I am sure the court will add,—that you will discharge from your minds every fact with which (though proved) the Prisoner is not directly and intimately connected.

Gentlemen, the examination of the witnesses produced upon the trial has taken up several hours. Nine witnesses have been examined, and the Counsel for the Prisoner did not think it necessary to ask any question of five of them; because, though they stated lamentable facts, they did not state any thing connected with, or affecting the Prisoner. The two first witnesses did not state any thing in the slightest degree affecting the Prisoner; yet it was thought necessary to ask them a few questions in order to shew the nature of that deplorable event. Some plan of a dangerous conspiracy appeared—it was prepared to some extent; and it is surprising, that it was so limited as has been proved by the first witness (who may be a suspicious witness, and I am not desirous of standing between you and his credit), the business was not much known through the working classes of the people.

MR. BARON DALY. The witness did not state any fact of that nature: he said, it *might* be so.

MR.

MR. BALL. My Lord, he said, he did not know of it till *Friday*. He said, he might have known something of the kind generally; but the particular time, when it was to take place, he did not specify any knowledge of till *Friday*, and he understood, that it was not generally known to the working people. He is a person who has been selected by the Prosecutor in this instance, as a person acquainted with the conspiracy, to state the particulars of it. He must be received as a principal conspirator himself, fully acquainted with and disclosing the subject; and neither the Court, nor the Jury can extend it further. If those who were at the head and had the arrangement of the plan did not communicate it to him, how can you think they would disclose it to those in an humbler sphere of life, who were ignorant of those who promoted it?

Then, Gentlemen, it follows; that there must have been a number of persons in the lower walks of life, utterly unacquainted with it. Indeed, if the witnesses were silent in that particular, it might be implied, from the secrecy of the transaction, that the knowledge of it must have been confined to a few, and that the great mass of the people were utterly unapprised of it.

This witness, Gentlemen, has given it to you as his opinion, and you must adopt it as your own; not only from the reasonableness of it, but because he is the only witness who in that respect has been submitted to the Prisoner for cross-examination. He states, that any individual man, who was not engaged in the conspiracy might be employed on that day in his usual avocations and employments, and he states it as his opinion, that if he had seen a man employed in the course of that day about his ordinary calling, he would have concluded, that he was totally ignorant of the conspiracy. And yet, Gentlemen, this is the person chosen as the engine, through whom you are to understand the nature of the transaction, and who, it may be supposed, was best acquainted with it, and that is his opinion.

Then, Gentlemen, is it, or is it not possible, under the circumstances of this case, as they are stated, and proved, as far as they have been proved, is it not, and I entreat you will put the question to yourselves, without suffering any quick or irritable feelings, natural to you, as men, to influence you, whether it is not possible, that a man, ignorant of this conspiracy, might not be innocently involved in a
numerous

numerous mob, which started up so suddenly in many parts of the city. Mr. *Wilson* stated to you, that such was the case of a gentleman, who was compelled to take a pike and to appear as a leader. If a man of that rank could be forced into that situation even for a moment, is it not possible, that such a fate might befall a man of the condition of the prisoner? an honest and industrious working man. If the one thing might happen, which you must believe, because the prosecutor tells it, a *multo fortiori*, might it happen, that the rabble might force a person of the humble rank of the Prisoner? they compelled a gentleman, even a loyal gentleman, to appear as their leader and to take an active part, as a leader: and what is there incredible in a similar force acting upon an ignorant stranger?

Now, Gentlemen, see what the evidence is, which applies to the Prisoner at the bar. There are but two witnesses who speak to his person; and from thence you are to collect something in his favour. The accomplice in the conspiracy does not pretend to know him. This alone ought to incline you to think his case extremely doubtful; and if there be a doubt, it ought to ensure his acquittal. Who have attempted to identify him?—two persons who never saw him before; and under such circumstances, when you come to consider them, to shew that their knowledge of the man must be extremely doubtful indeed. If there shall be any room for you to say, whether then these two persons did not accurately know and recollect the Prisoner, so as to identify him now, I say, if there be a doubt in that respect, the bench will tell you, that such a doubt is, in your minds, to be the signal of acquittal; and that there ought to be such a doubt; I will undertake to demonstrate, and if I do, the acquittal of the Prisoner must be certain.

Gentlemen, the only evidence which in the smallest degree tended to affect the Prisoner, was that given by the officer and by the soldier, and if you compare them together, you will find that they cannot be consistent, and literally true. I do not mean to charge them with intentional falsehood, and I think it impossible that Government could bring forward persons whom they doubted;—but I mean to say, that it is impossible their evidence can be literally true.

The officer said it was so dark that he could not see the first pikeman until he came plump upon him in the middle of the street.—But he has gone further; because he says he believes,

believes, from the extreme darkness, that a man standing by himself, was neither informed by his eye nor his ear of the approach of the military, until he was seized. Consider that evidence for a moment. Conceive a night so dark; that the pikemen could not perceive the approach of soldiers in scarlet uniforms, with feathers in their caps, and burnished arms. The assistance of his ear did not enable him to observe their approach, and it is observable, that an impression upon one sense rouses another to exertion—If you hear any thing, you naturally look for it—Consider then the fact stated: a man standing out at a distance, detached from the main body—on the watch for either rebels, or military, yet men with fixed bayonets, dressed and accoutred as I have described, are not discovered, until they came upon him;—he had no time to escape—not even to drop his pike without observation; and he, who from the description of his situation must have been supposed to be particularly vigilant, had no opportunity to retire.

Gentlemen, suppose all this to be true, and impress upon your minds that cloud of darkness which has been represented, and then examine the testimony of the soldier *Stott*:—He says, he heard the Prisoner call out, "*Royal Pikemen*." I will say no more upon the expression said to have been used than this, it is extremely improbable; however you or I might use it, as a signal of encouragement, it is not likely that a rebel should use it upon that night.

But what more does he say,—that the man, who uttered these words threw away his pike. Compare the situation of the soldier with that of the adjutant and the man with the pike whom they met in the street, and see what the inference is. If adjutant *Brady* was not visible to the supposed pikeman, until he was within a yard of him, by what power of vision or of hearing was it, that the soldier in the 2d division of forty men could distinguish a man in such a situation as the Prisoner was said to be in. I observed that the soldier felt this difficulty, he began to perceive that if what the officer swore was true, it was utterly impossible from the distance, he the soldier could distinctly know the man who threw away the pike. How does he solve that difficulty? He says it was the flash of the muskets that disclosed the person of the man!

Now,

Now, Gentlemen, analyze for a moment the picture which he has thus drawn; and what does it amount to?—I knew, says he, by the flash of the muskets, that the hand which threw away the pike belonged to the mouth which spoke, and that mouth to the same man who threw down the pike!—Whether this witness is swearing intentionally false, is not now the question; but the question for you to determine is this, Is it in the nature of things that it can be true? Is it consistent with the account given by the officer?

I will put a familiar case: Suppose this were the ordinary case of a robbery, or an assault upon your person (a case in which your feelings would not be inflamed, nor loyal principles filled with anxiety—not that innocence might be punished, but that the guilty might suffer)—would you for a moment listen to such evidence?—Why then, the law is exactly the same; and the bench will tell you, that you are not to apply any rules of evidence, or mode of judging of the credit of witnesses, in cases of this kind, which would not apply in the case of any ordinary malefactor.—If you would believe a strange and inconsistent story, upon the trial of a man for robbing your orchard, or fact of that trivial nature, there is no reason why you should not believe the soldier.—The Prisoner could not in that case complain.—But, I trust, that, as your good sense would reject such evidence in the common and trivial cases, so you may equally reject it in one the most important,—that a tale so fraught with absurdity and inconsistency as to render it impossible to be true, cannot be received by you, and that you cannot reconcile it to your humanity, upon such testimony to doom a fellow-creature to death.

Gentlemen, there is another defect in the evidence.—You saw the confusion between the soldier and the officer in their testimony respecting the taking up of this man—see whether that does not raise another doubt, and if so, that will ensure the acquittal of the Prisoner. See the confusion which took place upon the occasion, and the misfortune which has arisen to the Prisoner from that confusion. If you find the Prisoner guilty of the fact stated, of having a pike, and throwing it away, you have not the best evidence of that fact which might be had.—With regard to that fact, what is the evidence?—The officer

officer did not see the pike, but a soldier gave him a pike, and said, *This is his pike.*—Was that soldier produced?—until he be, you will have to decide upon that fact, knowing that the best evidence of it has been kept out of your reach.—The soldier who took up the pike is not produced; he gave it to the officer, and the officer tells you what was said—and are you to find a verdict of conviction upon what is stated by hearsay?

But it may be said, the prisoner heard it, and made no reply. Gentlemen, with regard to the evidence of declarations made in the prisoner's presence, when not contradicted, you must be satisfied that the prisoner heard them. Now, no witness here has sworn that the prisoner heard these words, or even that he must have heard them, or that he had an opportunity of contradicting them.

Suppose any loyal yeoman had been forced among that party, could he not assume the appearance of acting with them, to save his own life? Why then, what was the conduct of the prisoner?—Conscious that he was taken up unlawfully, he endeavours to release himself—they were the exertions of a man to obtain safety.—It appears that his life was in danger from the soldiery—the officer had some difficulty in preventing the soldiers from dispatching him, and it is not surprizing, that in such a state he did not hear particular expressions uttered by one individual to another. It appears, that he had not a very good hearing, because, if the evidence be true, he did not hear the approach of the army;—and in addition to all this, see the dreadful inconvenience he suffers, from the inaccuracy between the officer and the soldiers:—One of the soldiers differed with him as to the identity of the prisoner:—One conceived he was the man who stood detached in the street,—that soldier is not produced,—we do not know him,—we did not know but he would have been produced, instead of the officer, who gives it as his opinion that the prisoner is not the man who stood in the street, but was taken in another place.

Gentlemen, if the law were the same here as in *England*, we would have known it. I do not mention this difference to make any unfavourable impression, or for any inflammatory purpose; but there he would be furnished with a list of the witnesses against him, and he would have known the particular fact that was to be proved

proved against him, and he would have known which of the soldiers would have been produced, and would have been prepared accordingly.

But there is another inconvenience:—no fact has been proved by more than one witness: In *England* the jury cannot credit one single witness in the crime of High Treason.—That is a statute, which in my humble judgment ought never to have been enacted, because it was already enacted in the heart of every man, who had a heart, or judgment.

What is the crime of High Treason no higher than the crime of Perjury?—Perjury is a very grievous offence, no doubt—yet it is trivial and insignificant in comparison of Treason; and when a jury is called upon for the conviction of a man prosecuted for High Treason, they are called upon to say, that it is more likely one man would commit treason, than another would commit the subordinate crime of perjury;—that it is easier to be credited, and that less proof will establish it.—The Legislature of England, seeing that prejudice had led juries into dangerous and fatal errors, from believing a single witness, came forward and said, we will correct that error by a law which is a declaratory one, and was occasioned by the prejudices and mistakes of juries, and it was enacted, that no one should be convicted save upon the testimony of two witnesses. Where are two witnesses proving the fact in this case?—There is not one witness entitled to your credit.

But take the evidence of the soldier, not to have been impeached, and not to be affected at all by the directly contradictory evidence given by the officer; yet he is wholly unsupported as to the circumstance of the pike; and you are to consider and weigh how far you are to give credit even to that single fact. Combine all the circumstances together, and do not suffer yourselves to be led away by any inclination to condemn—a disposition to include guilt in accusation: Gentlemen, it is human nature! You have heard a phrase used by women and children, when a man is accused of any atrocious crime, they exclaim, *He ought to be hanged without judge or jury.* Does not that imply, that his guilt or innocence is not to be investigated. But is that prejudice confined to the ignorance of the lower orders? Look at the higher orders and you will see with them, that accusation implies more or less of conviction.

Go up to the Bench, and there alone prejudice is completely removed; because the judge is early taught by his education to resist the prejudices of nature. But it is not for you, Gentlemen, not so educated, to separate and detach those feelings. But I know you are men and honourable men, and that you have fortitude to throw off any inclination to conviction, let what will be the consequence to yourselves or to the state. You will speak in the language of the law, "The innocent ought not to suffer—the guilty alone should suffer"—those who have been proved to be guilty, without leaving upon your mind a single *scintilla* of doubt. What! cannot you doubt where the witnesses are confused? where a multitude may be involved in the vortex of accusation, and where all cannot be guilty?

Gentlemen, if all this be sufficient to raise a doubt of the Prisoner's guilt, the facts which I am to state will confirm it further, and entitle him to your verdict in his favour. This is stated to have been an ebullition caused by the leaven of the old rebellion: so I believe it to be. The incendiaries who set it on, thought fit to resort to those only who were implicated in the late rebellion, as in the instance of *McCabe*: and therefore it becomes an additional circumstance to raise a doubt in favour of the Prisoner, if he were not of that description, which would invite disclosure from the leaders of the conspiracy.

If instead of being full of anxiety, like a man watching for the business of the approaching night, instead of calling his troubled spirits into council, and being disturbed by the agitations natural to such a state, he was occupied in his daily and ordinary occupations during the whole of that day upon which the insurrection broke out—that he returned peaceably home after the labours of the day were over, and that he has through life borne an honest character as an industrious man, your doubt will be converted into a certainty of his innocence; and you will not have to lament, "We were obliged to acquit him, though we believed him to be guilty:" that will not be your feelings upon this occasion.

Gentlemen, the Prisoner is a dealer in an humble line; he purchases and sells skins. He had been employed in this business the whole day, and was upon his way home when he was met in the street; not in the manner you have been told, because you have been told different ways, but returning

turning quietly home after his ordinary business. If you hear this, and that he was not implicated in the former rebellion, but upon every occasion acted the part of an honest, upright man, you will pronounce a verdict in his favour.

Francis Coghlan,

Examined by Mr. BETHEL.

Q. Do you know the Prisoner at the bar?

A. I do.

Q. What is his business?

A. He is in the skin dealing line.

Q. Do you remember the 23d of July last?

A. I do.

Q. Did you go that day to purchase any articles in company with the Prisoner?

A. I did.

Q. What did you purchase?

A. Some pig skins and calf skins.

Q. From whom?

A. From one *Kearney* in *Thomas-street*.

Q. Did you see him on the morning of the 23d?

A. I did. I went for the skins, and took them out of the place: the Prisoner told me he had a man for them.

Q. Were you joined with him in the sale of the skins?

A. I was.

Q. What time were you engaged with him that day?

A. I met him at ten in the morning, and staid till eight in the evening.

Q. Where did you leave him then?

A. At *Connaught's* in *Watling-street*, a public house.

Q. Where did the Prisoner live?

A. At *Bow-bridge*.

Q. Is not *Watling-street* the way to *Bow-bridge* from the city side?

A. It is.

Q. What business do you follow?

A. A Skinner.

Q. Where did you go when you left him?

A. I went home to my own family, with two of the skins which remained unfold.

Croft

Cross-Examined by Mr. ATTORNEY GENERAL.

- Q. Where do you live?
 A. In *Watling-street*.
 Q. Have you always lived there?
 A. I was born and always lived there.
 Q. Did you ever live upon *Aston's-quay*?
 A. No.
 Q. Where did you go upon leaving the Prisoner?
 A. I went home.
 Q. When did you first hear of the disturbances that night?
 A. I never heard of it at all, until I went out into my yard.
 Q. At what hour was that?
 A. About ten o'clock.
 Q. How long did you continue drinking with the Prisoner?
 A. From six till eight o'clock.
 Q. How many persons were there?
 A. There was no other person.
 Q. In going from *Watling-street* to *Bow-bridge*, would you go through *Thomas-street*?
 A. No; it is not the shortest way.

*Patrick Connaughty,**Examined by Mr. BALL.*

- Q. Do you recollect the night of the 23d of *July* last?
 A. I do.
 Q. Did you see the Prisoner that evening?
 A. I did.
 Q. Where?
 A. In my own house.
 Q. At what time?
 A. It was near ten o'clock.
 Q. Did he occasionally frequent your house?
 A. He did.
 Q. What state was he in?
 A. In a state of intoxication.

Q. How

Q. How long did he stay?

A. I cannot say—the house was very throng.

Q. What was his general time of leaving your house?

A. Sometimes he would stay till twelve or one o'clock. He was generally the last person who would leave my house.

Cross-Examined by Mr. PLUNKET.

Q. How long have you kept a public-house?

A. Two years.

Q. A very respectable one?

A. I hope so.

Q. You are very attentive to the company you entertain, and careful of their morals?

A. I have.

Q. What marks have they given you of their estimation of your good conduct?

A. I cannot say.

Q. Were you ever fined by them for improper conduct?

A. I have, very often. I have been fined for selling spirits on Sunday.

Q. How many persons were in your house that night?

A. No one but himself, when he went away.

Q. Did you see Coghlan there?

A. No; the house was so throng.

Q. Then if he was there, he must have gone away when the house was thronged?

A. He must.

Q. Can you tell the names of any other persons who were there?

A. One *Frank Delman* was there.

Q. Who is he?

A. He works at the Castle, and is with the Lord Lieutenant.

Q. Had he any business at the Castle that night?

A. I can't say. I gave him some change.

Q. Were there any other persons?

A. There were some soldiers.

Q. What are their names?

A. I can't say.

Q. Mention the name of any other person?

A. There was one *Dodd*, who works with *Glannon* of *Thomas-street*.

M

Q. What

Q. What time did he leave your house?

A. A few minutes before the Prisoner. He was the last man who staid; and when the last glass was drinking, I heard the noise of the business going on in *Thomas-street*. I took the glass from the Prisoner, and would not let him finish it as he was intoxicated.

Q. What was the business?

A. A rising, or a rebellion, or what you please to call it.

Q. Whom did you desire to go away?

A. I desired them all to go, and they went—but he remained, and my sister brought him another glass, which I took from him.

Q. Where does he live?

A. In *Bow-bridge*.

Q. And can you assign any reason why he should, after you told him of the rising in *Thomas-street*, go that way to *Bow-bridge*?

A. I cannot.

Q. Did you go out yourself that evening after?

A. I did not.

Q. Nor let any person in?

A. No.

Q. By the Jury. Have you any clock in your house?

A. I have.

Q. Did you look at it, at the time you speak of?

A. I did not.

Walter Kearney,

Examined by Mr. BETHEE.

Q. Where do you live?

A. In *Thomas-street*.

Q. What business do you follow?

A. Principally dealing in skins and feathers.

Q. Do you know the Prisoner?

A. I do.

Q. Do you remember the 23d of *July* last?

A. I do.

Q. Did you see him upon that day?

A. I do not recollect.

Q. Have

Q. Have you known him long?

A. Since I went into business, four or five years ago. He has bought articles from me which he sells by retail.

Q. What has been his general character during the time you have known him?

A. A very stirring, industrious creature; but addicted to liquor.

Q. You knew him but three or four years?

A. Yes.

Q. You did not know him in the last rebellion?

A. I did not.

Q. Have you an apprentice?

A. I have.

Q. Is he here?

A. No; he has lost the use of his limbs.

Thomas Fitzsimons,

Examined by Mr. BETHEL.

Q. Do you know the Prisoner at the bar?

A. I do.

Q. Where do you reside?

A. In *Irwin-street, Bow-bridge.*

Q. How long have you known him?

A. Three or four years that he lived in *Counsellor Bethel's* concerns; he was an honest, industrious man during that time.

William Smith,

Examined by Mr. BALL.

Q. Do you know the prisoner?

A. I do, near six years.

Q. Did you know him in 1798?

A. I did, I have bought skins from him. — I have one of his sons articked to me.

Q. What is his general character?

A. I always took him to be an honest industrious man, working for the support of his family.

Q. Where do you live?

A. In *Watling-street*, in No. 52. — I served my apprenticeship in *Leeds*,

Cross-

Cross-examined by Mr. MAYNE.

- Q. Do you live in *Walsling-street* now?
 A. Yes.
 Q. Are there any parties in that street?
 A. I cannot say—I do not meddle with matters of that kind.
 Q. What country man are you?
 A. An Englishman.
 Q. Have you any property in this country?
 A. I won't tell you that.
 Q. I have no wish to know the extent of it.—But from what I can collect from you, sir, you know nothing about the prisoner more than that he sold skins.—You seem to be in a different situation in life from the prisoner.—I want to know whether there subsisted that kind of intimacy, that you communicated much with him?
 A. No, sir, there was no communication of that sort.

William Lloyd.

Examined by Mr. BETHEL.

- Q. Where do you live?
 A. At *Stoneybatter*.
 Q. What business do you follow?
 A. I keep an inn there, and have some land.
 Q. Have you known the prisoner?
 A. I have for several years.
 Q. Did you know him in the last rebellion?
 A. I did.
 Q. Did you ever hear any charge against him for disloyalty?
 A. I did not.
 Q. What has been the character for integrity?
 A. I never heard any impeachment against him.

(Here the evidence closed.)

Mr. BETHEL, on the part of the Prisoner, waived his right to observe upon the evidence—and

Mr. SOLICITOR GENERAL waived his right to reply.

Lord

Lord NORBURY.

Gentlemen of the Jury,

I am sure you must be perfectly impressed with the solemnity of this occasion. You have been very honourably cautioned and advised, before I had an opportunity of addressing you, to divest your minds altogether of every circumstance which you may have heard, or even felt deeply before you came into the box. I know you well enough to believe, that you want no exhortation from me upon such a subject. However, as you have a most important duty to discharge, and it having devolved upon me to sum up the evidence of this trial, I shall endeavour to do it in as clear and short a manner as is possible, consistent with such a detail of it as may bring the issue which you are to try, and the facts which bear upon it fairly before you.

Gentlemen, you have heard the indictment read; I shall shortly state the substance of it to you, divested of the legal and technical difficulties, that might attach upon it in a more complicated case; but here the clearness of your understandings has not been distracted by a dilated statement of facts, by a tedious ambiguity of evidence, or the subtilties of metaphysical reasoning; and though the present trial has proceeded to some considerable length, I observe that your attention has not relaxed: and you will be able to discharge your duty without having your recollection deranged, or your attention disturbed by any adjournment of the trial, which I trust may never again become necessary in the administration of criminal justice.

Gentlemen, this indictment contains two counts, founded upon the statute of treasons, of so old a date as the 25th Edward III; and there are but two clauses of that statute which form the subject of your enquiry. The first relates to the compassing and imagining the death of the king; and the other to levying public war against his crown and dignity: on them are framed the counts in the indictment. But it is also necessary, in indictments of this nature, to state such overt acts as may be supported by evidence; and the overt acts here to support the first count are, that the Prisoner did, in furtherance of such treason, conspire with others to levy war and insurrection, and to make cruel slaughter of the king's subjects. The second is, that he did for the purposes aforesaid, arm himself with a pike; and the

the third is, that he did associate himself with a number of persons armed with hostile weapons, and in military array, did levy war against the King.

I know that these subjects require some precision, and therefore I thought it my duty at the present period, on the first trial which has taken place at this Commission, to state with a guarded accuracy, some principles of law, taken from adjudged authorities, which may assist you in the course of your investigation.

I should only repeat to you, that which has been urged of late in the hearing of you all, were I to dwell upon this subject long.

The acts which are capable of demonstrating the wicked intention, are as various as the suggestions of the most fertile conceptions of the most depraved imaginations. They are called "*overt acts*," and when the overt acts laid are proved to have been committed, then devolves upon you the very important duty of weighing well and considering whether the act done and related to you was so done in furtherance of the traitorous intention, as stated; and in order to enable you to do that, I am further to inform you, that it has been long settled law, that not only *direct* and *immediate attempts* against the King's life, but all *remoter* steps that tend within reasonable probability to bring about that event, if in furtherance of the treasonable design, amount to High Treason.

But, gentlemen, whatever embarrassments may have arisen in some cases which have been adjudged, I think I am bound upon such an occasion as this to tell you of what never has been doubted, nor created embarrassment since the law of treason has been enacted and declared. It never was doubted, but that a rising in force, with great numbers, and arrayed with the declared and avowed view and design to overthrow the Government existing in the country, and to seize the power and authority of the Government into the hands of insurgents, was High Treason.

I think it right, however, before I detail the evidence, to direct your attention to two distinct subjects, and to simplify your consideration of them.

Those two distinct subjects are, *first*, whether such a Treason and Rebellion, as stated in the indictment, did exist;—to wit, a Treason founded upon a conspiracy

racy of insurgents to overturn the Government, sending, even remotely, to bring the king's life in danger, and to seize the Government into the hands of the insurgents.

Having proceeded so far, the next step, and the only one remaining for your consideration, is, whether the Prisoner at the bar, upon the evidence given, as relating to the overt acts in the indictment, did commit that overt act in furtherance of such wicked design, and thereby was guilty of *the Treason*, the existence of which is the first step for your consideration.

Now, there seem to be some facts in this case so clear and undeniable, that it is not necessary for me to labour them with you, or even to detail the evidence respecting them. For in truth it is not controverted, upon the evidence given, or upon the defence made, or arguments of counsel for the prisoner, but that there was upon the 23d of July last, a dreadful insurrection and rebellion, which did rage within the city of Dublin; of such an insurrection you have abundant evidence, and that on that night a body of men in great number, did rise and arm themselves with pikes, upon a preconcerted plan, with the motive and objects attributed to them — you have heard that evidence, (it remains uncontroverted) and if you believe it, I am bound to tell you what the deduction of law is,—namely, that a number of persons assembling, and embarking in a project to seize the seat of Government, to put down its lawful authority, to overturn the Royal power, and to wade through blood and slaughter to such a republic in Ireland, as is proclaimed by that paper which has been given in evidence, for the purpose and design of substituting in the room of the legal Government, the Provisional Government of sanguinary Rebels, the necessary consequence flowing out of such a conspiracy, and the obvious intentions were to dethrone and depose the King, and such object must have been preceded by a malignant intention and imagination existing in the minds of those who formed it, of compassing and imagining the death of the King. Where such a project was conceived, of deposing the King from his Royal authority, from the natural order and relation of things, it draws after it a necessary and incontrovertible presumption of law and fact, of such malignant imagination, and preconcerted intention.

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These are general positions, which have been sanctioned by the greatest authorities. I have endeavoured to compress them with as much brevity and precision as I could, and with the more direct view, that this case may not stand embarrassed with those complicated difficulties, which you may have heard of as arising on other trials in the other part of the United Kingdom. It would be equivocating with justice to embarrass this case with matter which does not belong to it, if you believe the evidence you have heard.

With regard to the facts of the case, I shall endeavour to state them to you from the evidence on my notes, and if I shall mistake in a single point, you will have an opportunity of correcting me, and my learned brethren will assist me in my progress.

Gentlemen, upon the subject of levying war, I rather prefer reading a position from authority, than from any note of my own. In Sir *Michael Foster's* admirable treatise it is laid down, *that an assembly armed and arrayed in a war-like manner for any treasonable purpose is bellum levatum*, until acted upon;—but afterwards when acted upon it is *bellum percussum*:—and it has been held, that assembling, marching and acting in hostile array sufficiently denoted the offence, if that be done for a treasonable purpose. And it has been also determined that attacking the king's forces, when acting under his authority, with a body hostilely arrayed is not only *bellum levatum*, but *bellum percussum*.

Gentlemen, I have, I hope, made these positions intelligible to you. I shall now commence with the evidence as given, which is fortunately fresh upon your memory. Your minds are sufficiently collected, and I shall not trespass so far upon you, as to bring you into any difficulty.

(His Lordship then stated the evidence minutely from his notes, making occasional observations.—When he came to state the Proclamation, he said.)—You observe how the several parts of this mass of evidence are connected.

This Proclamation is as wicked in principle as it is conclusive of its design; it shews clearly, from the composition from the place where it was found in the general rebel depot; and in a damp state just issued from the press an active instrument of dreadful preparation. None can doubt the object of this accumulated mischief, hand grenades and other implements of destruction, thus concealed
and

and collected; but when you find the banditti of ruffians rushing forth from that very depot at the moment of darkness, to perpetrate their horrid atrocities of foulest and most cruel murders, with a barbarous exultation, *that Dublin was their own*. The Proclamation speaks for itself, and you are able to trace by their bloody track, the distinguished footsteps of the Provisional Government.

Gentlemen, the next proposition for you to consider is, how the prisoner, upon the evidence given, was implicated and took a part in this conspiracy and horrid rebellion, for with regard to its existence there is no doubt in the case.

If you shall be of opinion upon due consideration of the evidence of its having established a proof of a conspiracy, of treason thus acted on, it is settled law, that any man taking a part in that conspiracy, by overt acts demonstrative of intention, is implicated in the general guilt. But as to the prisoner, I am now to intreat of you to recollect that although you may be clear of the treason having existed, you should receive no impression from thence unfavorable to him, unless he shall, upon the most cautious deliberation and convincing proof, appear to have taken such a part therein as to have involved him in guilt.

The degree of credit you give the evidence that may tend to implicate the prisoner, I leave entirely to you; I do not interfere with it—that is for your judgment. But if you do believe the evidence, see what it is;—that in the night of this horrid business, the Prisoner is found in *Thomas-street*, the principal scene of horrid mischief, with a pike in his hand; a weapon of the same nature and description as those found in the *depot*, where they appear to have been collected for treasonable purposes. The King's troops engaged in the act of suppressing came suddenly upon him, he instantly flings down the pike, the prisoner and the pike are immediately secured a few yards from the great body of rebels then rushing on the King's troops, he the prisoner having previously called out, *Royal pike men, come on*.

The prisoner makes violent resistance and endeavours to escape, which endeavours he continued with unremitting struggle for a considerable time; 'tis for you to discriminate whether this was the conduct of an innocent man that might have been terrified, or of a man who from a consciousness of guilt was endeavouring to make his escape:

—and you will decide whether he was a man ~~found~~ there by accident and unconnected, or whether he was acting with the insurgents and encouraging them to come on to the attack of the Troops, if so, the man who thus joins and acts with rebels is implicated in the whole of their Treason.

I am the more anxious to state the law and the evidence accurately, because at a season of such awful solemnity as the present, it is incumbent upon us to shew the public, with what deliberation and temper the law proceeds to investigate the case of every individual criminally charged— with what anxiety the lives of all innocent men are guarded.—The Grand Jury are appointed to consult privately in their chamber; the prisoner is served with a copy of his indictment, and he is allowed a number of days to prepare himself—he has counsel of his own selection.—It is of infinite importance to the public to know and understand, what an excellent law it is under which we live— that the administration of justice exists in its fullest perfection:—I am satisfied that whatever may have lately happened to irritate the public mind against the authors of daring outrage, you are as dispassionate and cool in deciding upon the fact, as the Bench is anxious in laying down the law for your instruction. Our due administration of justice according to the British Constitution, is the admiration of the world; the law is our best security and birth-right, the preservation of it engages every good man in the defence of the country, and if any thing could raise it higher in the general estimation, it is that even in the most disturbed times, that law shall be administered with unruffled temper and calm deliberation.

Gentlemen, I have one word more of advice to give you, where you have the life of the Prisoner to dispose of, be just to him, and just to the Country; and if you can entertain a rational and well founded doubt of the guilt of the Prisoner acquit him. I have kept out of your view every thing that did not belong to the particular case of the Prisoner; though I feel with as much anxiety as any man, the lamentable events of that evening to which these unhappy transactions relate,—though a man was destroyed that evening who was the best object of our affections, whom we all loved and admired, yet that should not operate upon your feelings, nor warp your judgment, nor should it bear at all upon the case, further than as it shews

shows under the accumulation of concomitant facts, that there was a cruel Rebellion existing at the time.

There was a sentiment of benignity which passed the lips of that great and good man whose loss we deplore, while his soul was yet hovering between his Country and his God, which should immortalize his memory, and you have been eloquently reminded in the statement of the case for the prosecution, of the benevolent and pious exhortation of his parting breath—let the prisoner at the bar have the benefit of the mild and merciful laws of his Country, but suffer not the justice of that Country to be outraged with impunity if you are convinced of his guilt.

The Jury retired for a quarter of an hour, and returned with a verdict.—*Guilty.*

MR. ATTORNEY GENERAL. My Lord, I am now humbly to move your Lordship to pronounce sentence upon the Prisoner.

The Prisoner was accordingly ordered to the Bar—the Indictment was read to him and he was asked what he had to say, why judgment of death and execution should not be awarded against him.

LORD NORBURY. *Edward Kearney!* However painful the progress of this trial has been, it is now more painful to pronounce upon you the sentence of the law.—You have had as patient a trial as any man could have, and you cannot complain, that you were tried in a part of the country distant from the scene of your transgression, where the attendance of your witnesses might be difficult or inconvenient. Every man called by you has appeared for you.—The Jury have listened to your cause with all possible patience and temper. I do not wish to disturb your mind, or oppress your feelings by a repetition of your guilt.—I wish to satisfy you, that justice has been done you, that you may compose your mind and prepare yourself for the punishment of your crime, in having endeavoured to subvert that law, which has given you so patient a trial—a trial so recent that it is unnecessary to go through any detail, to remind either you, or those that surround you, of the evidence that was conclusive of your guilt. Though that evidence was confined to a small number of facts, the patient investigation of your case has occupied an entire day. The transactions of that night, when a most wicked and unprovoked rebellion broke out with such horrid acts of atrocity, have

have brought indelible disgrace upon this unfortunate country. Upon that night you and your associates hurried many an honorable man, without warning, to an untimely grave—you hurried on the savage pikemen to the charge, against the mild dispenser of benevolent justice: he was the advocate of the oppressed, and listened with patient kindness to the defence of the accused;—but the first effort of your *Provisional Government* was in the barbarous phrenzy of your Republican Tyranny, to put that great and good man to cruel and instant death, without one moment of preparation—how shall you hope for mercy rendering none!

Prisoner. My Lord, I know nothing of it.

LORD NORBURY. You have been patiently heard; and that so soon after the transaction alluded to, that you yourself must be astonished at the calm impartiality with which the investigation of your case has been attended to. I mean not to insult you with your misfortunes and your crimes; I had rather to assist your mind with pious exhortations to make your peace with God. For although your associates have shut the gates of mercy against the innocent, the mercy of God is infinite to the sinner that repents.

Prisoner. I thank the Court and the Jury; but I am condemned innocently. I was taken at *Echlin's-lane*, without a pike or other weapon.

LORD NORBURY. I have, with the tenderest concern for your situation, allowed you to interrupt the progress of a most solemn and painful duty. Let me entreat you to be composed. There is not a shadow of doubt upon your case; taken as you were while the battle was raging, with your weapon in your hand. What does your own witness say:—you went from *Watling-street*, not through *James's-street*, which was your way home, but into *Thomas-street*.

Prisoner. I deny it, my Lord; I was taken in *James's-street*.

LORD NORBURY. Lieutenant *Brady*, who is as humane as he is brave has proved the reverse. You have one consolation left, which is, that by the timely example of the criminal, the law will be preserved for the benefit of your children and your friends that you leave behind you. The punishment allotted to your crime is to preserve the tranquility of the country.

quillity of the country, that honest men may live with security, and sleep quiet in their beds, and that property and peace may be preserved. I intreat of you again to be composed, and to look up to heaven with pious resignation and humble prayer, to be forgiven there, as I am now to proceed to pronounce the sentence of the law.

His Lordship pronounced the sentence in the usual form.

The Prisoner was executed the next day in *Thomas-street*, pursuant to his sentence.

Counsel for the Crown.

Mr. Attorney General,
Mr. Solicitor General,
Mr. Plunket,
Mr. Mayne,
Mr. Townsend,
Mr. Ridgeway,
Mr. O'Grady.

Agent, Mr. Kemmis.

Counsel for the Prisoner.

Mr. C. Ball,
Mr. Bethel.

Agent, Mr. L. Mac Nally.

A
R E P O R T
OF THE
PROCEEDINGS
IN
Cases of High Treason.

SPECIAL COMMISSION.

Thursday, September 1st, 1803.

Thomas Maxwell Roche was arraigned upon the following indictment :

County of the City of } THE Jurors of our Lord, the 1st Court
Dublin, to wit. } King, upon their oath present, that Thomas Maxwell Roche, of the city and county for compass
of the city of Dublin, yeoman, subject of our said Lord the now King, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved his death
and seduced by the instigation of the Devil, as a false traitor against our said Lord the now King, his supreme, true, King
lawful and undoubted Lord, the cordial love and true obedience which every true and dutiful subject of our Sovereign reign

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reign Lord the King, towards him our said Lord the King should bear, wholly withdrawing, and contriving and intending the peace and common tranquillity of this realm to disquiet, molest and disturb, and the Government and Constitution of this realm to change, subvert and alter, and our said Lord the King from his Royal state, title, honour, power, Imperial crown and Government of this kingdom to depose and deprive, and our said Lord the present King to death and final destruction to bring and put, he the said *Thomas Maxwell Roche*, on the twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, wickedly and traitorously did compass, imagine and intend, our said Lord the king then and there his supreme, true, and lawful Lord, of and from the Royal state, crown, title, power and government of this realm to depose and wholly deprive, and our said Lord the King to kill and bring and put to death. And that to ^{1. *namely*} fulfil, perfect and bring to effect his most evil and wicked Treason and treasonable imaginations and compassings aforesaid, he the said *Thomas Maxwell Roche*, as such false traitor as aforesaid, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, maliciously, and traitorously did conspire, confederate and agree to and with divers other false traitors, whose names are to the jurors aforesaid unknown, to raise levy and make a public and cruel insurrection, rebellion ~~and war~~ against our said Sovereign Lord the King within ^{2.} this kingdom. And afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *Thomas Maxwell Roche*, as such false traitor as aforesaid, in further prosecution of his ~~treason and treasonable~~ purposes aforesaid, did arm himself with, and did bear and carry a certain weapon called a pike, with intent to associate himself with divers other false traitors, armed with guns, swords, and pikes, whose names are to the said Jurors unknown, for the purpose of raising, levying and making insurrection, rebellion, and war

war against our said Lord the King, and of committing and perpetrating a cruel slaughter of, and amongst the faithful subjects of our said Lord the King within this kingdom. And that afterwards, to wit, on the said twenty-third day of July, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas Street*, in the city and county of the city of *Dublin* aforesaid, the said *Thomas Maxwell Roche*, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, with a great multitude of persons whose names are to the Jurors unknown, to wit, to the number of one hundred persons, and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords and pikes, being then and there unlawfully and traitorously assembled and gathered against our said Lord the King, did prepare, levy, ordain and make public war against our said Lord the King, against the duty of the allegiance of him the said *Thomas Maxwell Roche*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided. And the said Jurors of our said Lord the King upon their oath do further present, that the said *Thomas Maxwell Roche*, being a subject of our said Lord the now king, and not having the fear of God in his heart, not weighing the duty of his allegiance, but being moved and seduced by the instigation of the Devil, and entirely withdrawing the love and true and due obedience which every subject of our said Lord the King should, and of right ought to bear towards our said Sovereign Lord the King, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, on the twenty-third day of July, in the forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas Street*, in the city and county of the city of *Dublin* aforesaid, unlawfully, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection and rebellion against our said Lord the King within this Kingdom. And in order to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions last mentioned, of him the said *Thomas Maxwell Roche*; he the said *Thomas Maxwell Roche*, afterwards, to wit, on the said twenty-third day of July, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas Street*,

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mas-fret, aforesaid, in the city and county of the city of *Dublin* aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with swords, guns, and pikes, being then and there unlawfully, maliciously and traitorously assembled and gathered together, against our said Lord the now King, most wickedly, maliciously and traitorously did ordain, prepare, levy and make public war against our said Lord the King, his supreme and undoubted Lord, contrary to the duty of the allegiance of him the said *Thomas Maxwell Roche*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded *Not Guilty*, and saying he was ready for his Trial, the following Jury was sworn, after six peremptory challenges by the prisoner, and five set by on the part of the Crown:

Cornelius Gautier,
Frederick Geale,
Francis Beggs,
Robert Burnet,
Thomas Read,
James Atkinson,

Robert Hunter,
Richard Jackson,
Charles Bingham,
Joshua Lacey,
George Palmer, jun.,
Fennell Collins.

The Prisoner was given in charge.

MR. O'GRADY opened the Indictment.

MR. ATTORNEY GENERAL.

My Lord, and Gentlemen of the Jury,

You, gentlemen, are impannelled to try the prisoner at the bar upon a charge of High Treason. He is indicted upon two branches of the statute 25 *Edw. 3.* for compassing and imagining the death of the King, and for levying war against him. And to each count in this indictment there are certain overt acts laid, for the purpose of pointing out to you the means used by the Prisoner for carrying the traitorous intentions of his heart into full execution.

Gentlemen, in investigating this charge, you will have to consider, first, whether, a traitorous insurrection and rebellion did exist in the city of *Dublin* on the

23d of *July* last ;—and next, supposing that there did, whether the Prisoner at the bar participated in the design, or aided in the execution of it.

With regard to the first part, it may appear to you almost unnecessary to enter into an investigation upon it ; because in truth the lamentable notoriety of the fact is impressed upon the mind of every man in the country, and no one is ignorant, that there was upon that day a rebellious insurrection, which disgraced the capital. It has also been taken notice of by the Legislature, and recited in two acts of Parliament which have been passed upon the grounds of its existence.

But notwithstanding this notoriety, it was thought right, for the satisfaction of the public mind, to go into a detail of that transaction, which admitted of legal and satisfactory proof, and its existence and dangerous tendency now stands further confirmed by the verdict of a Jury.

But although, gentlemen, in consequence of these circumstances, we do not consider it right to consume the public time, or unnecessarily to trespass upon your feelings by going again into a minute detail of the atrocities which were committed, or the means by which the Rebellion was instigated, yet we shall by a short examination of one or two witnesses, lay sufficient evidence before you, to enable you, in point of law, to draw the same inference as the Jury of yesterday did, namely, that the late disturbances in this city were of a treasonable and traitorous nature.

Having established this point, the next, and the most serious and important one for your consideration will be, What part the Prisoner took in that much to be lamented transaction ?—He will be guilty of the crime of High Treason, if any thing shall appear to you to have been done by him, shewing that he agreed, that such an insurrection should take place—You will also find him guilty, whether it appears that he previously knew of it, or not, if by his presence he wilfully aided and encouraged those who were concerned and engaged in it.

For that purpose, we will produce Lieutenant *Brady*, who in marching his men into *Thomas-street* saw a man standing by himself, with a pike in his hand, apparently as a centinel, and holding his pike in such a manner as shewed a determination to make use of it. He was taken into custody, and he immediately exclaimed and vociferated

in such a manner, as to apprize his friends near him, that he was taken. The moment he made the noise (which shews the concert of the party, and the object with which he shouted) a bottle was thrown from the left, and a shot was fired from the right, which grievously wounded one of the 21st, who is since dead. The prisoner thus shewed by his conduct, that he stood as an advanced post; and he endeavoured to account for the pike with which he was armed, by saying, that he found it in the street.

Gentlemen, I state this to you, because an attempt was made in the course of the evidence yesterday, to shew, that a person might be forced into the measure.—But here there can be no such defence. The prisoner was by himself and could have abandoned the weapon; but instead of doing so, when he was taken by the officer, he struggled and alarmed his friends.

I cannot anticipate what defence he may make; but it having been intimated yesterday, that the prisoner then upon his trial was intoxicated at the time he was taken—and some questions having been asked by the Jury, which seemed to give countenance to this species of defence, I think it my duty to call your attention particularly to it, and to state explicitly that is a ground of vindication not permitted by the law, and which should equally call for the reprehension of the Court and the Jury. So far from constituting a defence, it is an aggravation of the crime. It has been always so considered by courts of justice, and I am sure your own observation and experience will justify the wisdom of the law.

Those who are about to perpetrate desperate actions are not always free from the sensations of fear; the remorse of a guilty conscience will shake the firmest mind, and therefore they frequently assemble in public-houses before the moment of attack, stimulating each other with licentious conversation, and borrowing from liquor and debauch that intrepidity and fortitude which should properly belong only to those who are engaged in honourable pursuits. But, Gentlemen, if this was to be considered as a protection which is used as a provocation, and if crimes were to be excused by those very circumstances which excite them, we should be left to the mercy of a dissolute rabble, whose characteristic is drunkenness, & who have already carried their favourite vice to such excess, as to give serious alarm to every man who entertains a just regard for the morals and industry

industry of the people. Intoxication has unfortunately become too familiar to them; it is in this country the origin of every evil and the primary cause of every disturbance and discontent; it keeps the people poor, and it will for ever make them unhappy: and therefore, Gentlemen, if such a defence should be set up this day, I trust it will receive no encouragement from you, and that you will have the opinion of the Court concurring with your understanding, that it constitutes no defence.

With regard to force, which I have already touched upon, it certainly admits of a different consideration, and is a good defence in point of law, when clearly and satisfactorily made out. But the mere assertion of the Prisoner will not answer; the fact must be proved beyond the possibility of contradiction.

Gentlemen, I shall not transgress further by consuming the public time. You will dispassionately discharge the duty reposed in you. You will look to your country, and you will look to the prisoner, and you will do equal justice between them both. You will discharge from your minds any impression which the lamentable occurrences of the 23d of July may have made; you will look to nothing but the evidence, which you shall hear, and I shall be happy if, upon the whole, you can with justice pronounce a verdict of acquittal. But if upon the other hand the evidence shall satisfy you of the Prisoner's guilt, it will be your duty to convict him. You will not, I am persuaded, be induced to swerve from your judgment one way or the other; and I have no doubt the result will be such as to give general satisfaction.

EDWARD WILSON, Esq. Examined.

(Upon his direct examination gave the same account as upon the former trial. *Vide* Page 37, No. I.)

Cross-Examined by Mr. MAC NALLY.

Q. You are a Peace-officer?

A. I am chief Peace-officer of the Work-house Division.

Q. The eleven you had with you were not a military party?

A. Those who were constables had commissions from the Lord Lieutenant to act as peace-officers.

Q. But

Q. But they do not belong to any regiment?

A. No, sir; but they have commissions from the Lord Lieutenant.

Q. You and your men are not called "The King's Forces?"

A. I think we are the king's forces.

Q. You would not consider yourself liable to be sent to a barrack, or to any distant part of the country.

A. I consider we are bound to obey the directions of the Lord Lieutenant.

Q. You are bound by act of parliament to keep the peace of the city. Have you your commission about you?

A. No, sir.

Q. Did you see the Prisoner among the party you mentioned?

A. I did not see him.

Q. You cannot say he was there?

A. No, sir.

Mr. MAC NALLY. Then all you can say of the Prisoner is, that you know nothing about him.—I shall ask you no further question.

WHEELER COULTMAN, *Esq.* Examined.

Witness gave the same account as before of the events of the night of the 23d, and his discovery of the depot. *Vide page 48, No. I.* He enumerated the various articles which were found and stated, that he computed the ball-cartridge at the time at 30,000; but that it appeared since by the return made to government, that they amounted to 36,000. He also stated, that there were some sky-rockets, without sticks, which he forgot to mention upon the former day—twelve baskets of bread were found with about 20 loaves each. In one part of the building there were some blankets and palliasses, as if some persons had slept there; also boards nine feet long, with nails drove through them in a diamond form, and about four inches projected beyond the board, which upon being thrown into the streets, would lame either cavalry or infantry. There were also a quantity of combustible matter, pitch, gunpowder, and other articles spread upon tow, like a plaister; which being set on fire and thrown against a wooden work, would set it on fire.

Cross-

Cross-Examined.

Q. You did not find any man there ?

A. No, I did not.

Berjeant THOMAS RICE, Examined.

Proved the Proclamation as before. *Vide page 54. No. 1.*

FELIX BRADY, Esq.

Examined by Mr. TOWNSEND.

Q. You are an officer in his Majesty's army ?

A. Yes.

Q. In what regiment ?

A. The 21st Fusiliers.

Q. Of what rank ?

A. Second Lieutenant and Adjutant.

Q. Look at the Prisoner at the bar ?

A. I see him.

Q. Tell the Court and the Jury, whether you recollect to have seen him before ?

A. I recollect to have taken him a prisoner in *Thomas-street*, on the night of the 23d of *July* last.

Q. At what hour did you get into *Thomas-street* that night ?

A. To the best of my recollection, it was half past nine ; I cannot be exact.

Q. From what place had you come ?

A. From *Corb-street* barracks.

Q. Was it in consequence of any information ?

A. It was in consequence of information given by a peace-officer, who said he came from Mr. *Wilson*.

Mr. MAC NALLY. My Lord, I object to this evidence ; it is mere hearsay.

Mr. ATTORNEY GENERAL. My Lord, It is not of much moment upon this trial ; but it may as well be determined now. We contend, that this is evidence, to shew the time and manner when the witness first heard of the insurrection, and to shew, that it was a general pre-concerted and extensive business.

No. II.

C

Mr.

Mr. MAC NALLY. My Lord, I object to the evidence; because the facts, if material, should be proved, not by the gentleman upon the table, who received them at second hand, but by the man who told them to him. This practice of stating facts as matter of inducement has been carried too far; and I beg leave to state to your Lordships the rules which have been laid down by the present Chancellor of England, in *Hardy's* case: Inducement goes no further in this particular instance than to shew, that in consequence of something told the witness, he went to a certain place; but as to the facts communicated to him, the party who communicated them should be produced.

Mr. ATTORNEY GENERAL. My Lord, I do not wish to press any evidence that might have the appearance of being illegal. But when we want to shew a general insurrection, we wish to state the facts which happened. We do not desire the witness to state to the court or the jury the particular expression used, or the facts told to him; but the general nature of the business.

Lord NORBURY. There can be no doubt, that such evidence has been always admitted.

Mr. Justice FINUCANE. This, which is now offered, is not evidence of inducement; but evidence of the fact itself.

Q. What was the general nature of the information you received?

A. The cause of my going with the company was, in consequence of information given by the peace-officer, stating, that an armed mob was in the city.

Q. For what particular purpose did you go?

A. To inform my commanding officer, the late Lieut. Col. Browne, of it, and to escort him to the barrack if he thought fit, or to receive his orders.

Q. Where did he live?

A. On *Usher's-island*.

Q. In the course of your way, you went to *Thomas-street*?

A. Yes.

Q. Was that your course?

A. Yes, sir.

Q. Which way did you enter *Thomas-street*?

A. From the lower end of *James's-street*.

Q. Is

Q. Is the entrance to *Thomas-street* thereabouts wide or narrow?

A. It is narrow there.

Q. In what manner did you proceed; cautiously or otherwise?

A. Very cautiously. I had ordered the men to be very silent, and we marched with fixed bayonets and supported arms.

Q. What was the first object you saw?

A. When I entered *Thomas-street*, the first object I saw, was the Prisoner at the bar, standing with his face towards *James's-street*, holding a pike in a diagonal position; the butt towards the ground, and the point upwards; he held it in both his hands.

Q. How near were you to him at that time?

A. Almost quite close: I was on the left of the leading division; I seized him, and asked him what he was doing with the pole; for I thought it such at the time—but some of the soldiers who had been here in the last rebellion told me it was a pike; they assisted me in getting it from him; he made great resistance. When I got the pike I felt the top of it, where there was a square piece of iron, very sharp, and secured with a ring. The Prisoner made a great noise, which was somewhat increased by the soldiers laying hold of him. I ordered them to be silent. I asked the Prisoner, as mentioned, what he was going to do with the pole: he made no answer. From the right hand, from a window, for I heard the sash moving, a bottle was thrown among my men, without doing any mischief. A shot was fired from the left, and wounded one of my men.

Q. In what state is he?

A. He is dead.—The men at this time were not primed and loaded. I desired them to form sub-divisions; and prime and load. After the shot was fired, I heard the rebels huzzaing in front of me, and I heard the trampling of their feet coming forward, as if in a very great body.

Q. Can you form a judgment what distance they were from you when you seized the Prisoner?

A. I cannot exactly say.

Q. How far were they from you when they huzza'd?

A. Not many yards; about twenty, or thereabouts, as I should think, from the time they took to advance, and from the place where I saw dead bodies afterwards.

Q. Upon

Q. Upon their advancing, what happened ?

A. The leading sub-division fired right down the street upon them. After the volley, I heard them run, and my men commenced an independent fire. Some of them coming close, my men fired right and left, when the rebels all fled.

Q. An independent fire is where every man fires as he can ?

A. Every file fires as fast as they can load.

Q. Proceed and mention what happened ?

A. When they fled, we advanced a little further, and found many pikes in the street. There were two men taken prisoners immediately after the fire ; it did not last many minutes. After proceeding a little way, I counted six dead, and one dying. I did not go further then. My wounded man was crying to be let home : it was dangerous to let him go by himself, and I was unwilling to diminish my force, by detaching a party with him. I turned to the right-about, and left the Prisoners and the wounded man in *James's-street* barrack. An order came from General *Don* for me and the Prisoners to go to him. This man at the bar was the first brought before the general. The Prisoner fell upon his knees, said he meant no harm, that he had a large family, and said he found the pike in the street.

Q. (*By the Jury.*) Was the resistance he made, by words ?

A. I cannot well explain it. He made resistance by struggling and by voice.

Q. (*By the Court.*) How soon after the noise was made, was the shot fired ?

A. Almost immediately :—he first shouted, and then the shot was fired.

Q. Was the party at such a distance, that they could hear the Prisoner ?

A. I cannot say ; but his noise could be heard from where the bottle was thrown and the shot fired.

Q. Was it in taking the pike from him that he made the noise ?

A. It was in forcing him between the sections that he made the noise,

Cross-

Cross-Examined by Mr. MacNALLY.

Q. When you saw the man first, he was in the middle of the street with the pike, in the position you have described?

A. Yes.

Q. Was he advanced from the party you fired on?

A. He was advanced in the front of them.

Q. How far, do you suppose?

A. I should suppose, about twenty yards.

Q. Were you advanced before the soldiers?

A. No; I was on a line with the first division.

Q. You were the first who saw him?

A. Yes; as being on the left of the division.

Q. He then held the pike in a sloping position. He could do no injury unless he changed his position?

A. No, he could not; that is a fact.

Q. He made no attempt to change the position of it?

A. He made no attempt upon me.

Q. You laid hold of him?

A. I did.

Q. It was in the dark—supposing he were an innocent man, he might have supposed you were of the rebel party?

A. When I could see the pike with him, he might have seen my regimentals and my sword drawn.

Q. There was some firing?

A. There was.

Q. Have you not heard that pikes were thrown out from stores or depots in the street?

A. I did not hear it that night, but I did hear it since.

Q. He was standing alone?

A. He was at the time I came up.

Q. Then he was in fact between two parties?

A. He was: but I came close upon him.

Q. He did not make any use of the pike, when you came up?

A. No, he did not.

Q. (*By the Jury.*) Did he make any struggle before he gave up the pike?

A. He did.

Q. Mr. MacNALLY. He was seized suddenly?

A. He was—upon being seized, he held the pike firmly until it was forced out of his hands.

Q. (*By*

Q. (*By the Jury.*) Could he have run away and made his escape before your party came up?

A. He might have thrown away his pike, and we would not disturb him, if he appeared without a pike, for I did not rightly know the business at that time, but we came close upon him,

Here the Counsel for the Crown offered the proclamation to be read.

Mr. MAC NALLY.—My Lords, there is nothing more certain than this, that any paper found in the possession of a man charged with high treason, whether printed or written—contracting the rule to shorten the argument, may be evidence against him, if proved ever to have been in his possession, or to have been his act—as in the case of *Stone*, letters from *Jackson*, proved to have been his hand writing were read, because they were found in the possession of *Jackson*, against whom there had been previous proof, that he was implicated with *Stone*.

Mr. BARON GEORGE.—That is not precisely the case. They came out of the possession of the Secretary of State—but they were proved to be *Jackson's* hand writing.

Mr. MAC NALLY.—But there was a connection established between *Jackson* and *Stone*. And it has been determined by Mr. J. CHAMBERLAIN and Mr. BARON GEORGE, that a general conspiracy being once proved, papers written for the purpose of shewing the object of the conspiracy, or society, may be read against any member of it.—But in all the cases, before the act of any person of the society could be given in evidence, it must appear that the party charged was a member of the society. In *Hardy's* case, it was ruled, that the acts of the society might be given in evidence against him, because he was a member of that society and even of other societies in *Sheffield* and *Edinburgh*, which were connected by their correspondence, the purpose of which was to overturn the government—they were all connected together, and the purpose was applicable to every member, as if one body. Now here is proof given of an existing rebellion to overturn the government—that is, if your Lordships are of opinion, that the evidence given amounts to such proof. If your Lordships over-rule me in that, I will not insist, that there is no such proof—but confine myself to this:—Here is a
paper

paper offered in evidence, found in an uninhabited house, called a *depot*, without proof, that the contents of the paper were known to the prisoner, or that he assented to it—that he ever saw it or had any connection with it—or who printed it—and it is offered as evidence to shew he conspired.—How conspired?—Lord MANSFIELD in his elegant manner describes conspiracy to be a breathing together; because all treason depends not so much upon the act done, as the consent to the act.—In conspiring the death of the King, it is the consenting, that makes the treason. I submit that there is no proof to shew that this paper ought to be read against the prisoner. There is nothing to shew he stands connected with the person who collected the papers. I put it in this way. Suppose the paper named the prisoner as a rebel, would it be evidence.—Every printer, who had the command of a press, and every rebel might introduce men of respectability, with a view of contaminating their characters, and I have known instances, where the best men in the country have been stigmatized by being joined in publications with rebels. Upon the grounds of sound policy, justice and law, and humanity, you are bound to protect men from being traduced.—Look to the case of *Henry Delamott*, no papers were read except such as were found in his possession, and one came from the Secretary of State, and it was found to be a copy, but made by *Delamott's* directions. In *Sidney's* case, papers found in his possession were read; but because they were not published by him, the legislature reversed the attainder against him, condemning the decision.—My Lord, all the cases rush into my mind; but I forbear to state more of them, and I shall submit to such decision as the Court shall make, contending however, that this paper ought not to be read.

Lord NORBURY. If your position were well founded, we have during a great part of the trial been admitting evidence, that should not have been suffered to go to the jury. The paper imports to be “An address from the provisional government.” I go no further at present. It is found amongst many thousands of the same kind just issued from the press in a great store, together with a great number of pikes, ammunition, and military weapons, calculated for destruction, and a general havoc. From that depot as it has been already proved the great body of the rebels
were

were supplied on that evening. The account of all these implements has been given in evidence without objection, as composing part of a general depot collected for the purpose and in aid of the general design laid in the indictment, and they were of that kind and of such extent as to carry their own interpretation of their object with them; and how can any part of that evidence have been admissible, and this other material which is now the subject of discussion, not be admissible? I do not comprehend the distinction, which would shew the admission of one and the exclusion of the other. There are always two questions in cases of this kind. The first is, whether a general design and conspiracy did exist—and the second is, how far particular facts may or can operate against the prisoner, by shewing whether he acted for the general purpose. The evidence is, that he was advanced before a party who were armed, and he was found armed with one of those instruments of the same description of those which were found in the store, from whence the great body of whom there is evidence, that the prisoner made a part, issued forth armed, within a quarter of an hour previous to the period in question.

The paper which is the subject of discussion, is a paper of incitement in direct furtherance of the general conspiracy, and calculated to give effect to every weapon in the store, and no part of the general conspiracy will be evidence against the prisoner, unless evidence shall be given to involve him. None of the cases cited with regard to papers found upon the person, as argued upon by the prisoner's counsel, are applicable to the present case; they bear no analogy to it, but stand upon a distinct ground of reasoning to establish a privity with the person to be affected. But this is established with regard to papers, that having proved a conspiracy to have existed, and the prisoner to be connected with that general conspiracy, the papers and proceedings of the same society in distinct places in furtherance of and relating to the general design, have been uniformly accepted as evidence explanatory of the general design against a party indicted for that treason. So it was yesterday ruled when there was a close attention to duty, by the counsel who attended for the person then upon trial. If this objection were well founded, it should have been made long ago; for the counsel should upon the same principle have objected to the examination of Lieutenant *Coulman*, respecting the

the depot, and all the other preliminary matter, but as explanatory of and as giving speech and utterance to those dumb implements of death, this paper is admissible evidence of the general design.

Mr. Justice FINUCANE.—In my apprehension, the answer to the objection is, that it does not fall within any of the cases that have been cited.—What is the charge here? That an open rebellion and war existed in the city of Dublin, and that the prisoner took part in it.—Is it not necessary to establish, first, that the rebellion and war did exist? Every evidence which goes to establish that is evidence admissible—not against a particular person, but to shew a general rebellion and war. When that is established, the next fact is, whether the prisoner did concur in it, knowingly and willingly.—But he is in no manner affected by the evidence with the case, unless he took a part in that insurrection.—Therefore in my apprehension when you consider the case, those which have been cited do not apply.—In the case of *Purchase*, all the transactions of the evening were given in evidence, altho' he did not appear till very late and for aught appeared, knew nothing of the matter, until he joined.

Extracts from the Proclamation were then read. *Vide page 54, No. 1.*

Mr. Mac. NALLY.

My Lords, and Gentlemen of the Jury.

This is one of those causes, in which the counsel assigned for the Prisoner, to aid him in his defence, must feel extreme anxiety indeed; because no man can divest himself of those impressions of horror and of grief made upon the mind, and sunk into the heart of every honest and loyal subject, by the commission of those atrocities, and those murders perpetrated by a wicked and nefarious banditti of savage miscreants, on the evening of the 23d of July last. That those atrocities must have been committed by emissaries acting under the direction of France, abundant proof exists. I say there is abundant proof before you, that to the machinations of French politics, the recent insurrection in Dublin and its vicinity, is to be imputed—yes, to France—France, the ancient and the avowed, the envious and the rancorous enemy of the people of England; (and at this day when I mention the people of England, I would be understood to include the people of Ireland) from

the time she acquired strength, to this day, down through the whole series of her history;—in every situation—under every monarch, at every æra, *France* has been the avowed or the insidious enemy of *England* and of *Ireland*—She has been the enemy of the realm under her kings, then is it surprising she should continue her enmity with additional rancour when all regular government has been overthrown; when her monarchy is laid in the dust—and when she is ruled by an usurper, who wields not a sceptre but a mace, to bear down and oppress all who are subjugated under its iron-rule.—Is it surprising that the machinations which destroyed civil society in that country, and in every other country where her power has introduced them, should be brought over and exerted here to destroy that constitution which *France* has always abhorred, and which for ages has been the guardian of regal authority, and the rights and the properties of the British people.

As a subject of that constitution—as an enemy to the anarchy that disgraces *France*, I accede to every thing which has been advanced by Mr. ATTORNEY GENERAL, on the present state of the French nation;—and the necessity of an union of heart and of hand in this country, to oppose that novel and non-descript tyranny attempted to be set up in this country by a deluded mob, whose folly is as conspicuous as their cruelty has been abominable.—God preserve us from the dominion of a mob, where, as my learned friend Mr. CURRAN, once said, (and in his absence I will attempt to express his sentiment) “anarchy reigns, and every bludgeon becomes a sceptre in the hand of a tyrant!”—where authority has been superseded, where power is unrestrained, and where no man is safe in his life or in his property from the inflictions of uncontrolled military force and arbitrary oppressions, falling upon himself and upon his children.

Gentlemen, I make this declaration from my heart, and I add, that my arm, weak as it is, my person, mutilated as it has been, are ready to oppose the base and ambitious foe that threatens to overturn the government of my country, and to enslave my fellow-subjects; and whenever my duty to my King and to my country shall call me forward, were that duty to place me on a forlorn hope, I trust I will not be found the first man who will turn my back upon the invading enemy.

Gentlemen,

Gentlemen, I accede to the law respecting High Treason, as it has been laid down upon this occasion by the King's Attorney General; that learned gentleman has stated the law in a manner clear and perspicuous to your understandings, and the rules he has adopted, resulting as they do from the highest legal authorities, of course must meet my full approbation as a professional man. But, gentlemen, there was a part of the learned Attorney's address to you, which made, indeed, a very deep impression on my mind, which could not escape your observation and feelings, and which, I trust, will have the benign effect intended, when you retire to contemplate on my client's case. Many of you were in this court yesterday, and I now allude to the humane doctrines addressed to the Jury of yesterday by the King's First Law Officer, he then said, and I trust you will now attend to his doctrine, as I repeat it, he then cautioned the Jury he addressed, that all they had heard upon the subject of rebellion, previous to their coming into court, ought to be wiped away from their minds—And so it ought, gentlemen, a Juror should come into his box with a clear and unpolled understanding, with a mind fair and unspotted as the ermine that borders the Judge's robe, the emblem of immaculate truth and of candour. I say you must, preparatory to the consideration of the prisoner's case, divest your minds of all prejudice, for he is entitled to your presumption of his innocence, previous to the detail of evidence. Therefore, gentlemen, you should reject from your consideration two observations which have fallen from the ATTORNEY GENERAL, in his statement.—He has stated that an act of Parliament has declared the existence of a rebellion in this country.—Gentlemen, that is no subject for your contemplation, the act of Parliament has not, nor could not be given in evidence against the Prisoner, and therefore it is my duty to tell you, that as Jurors you are bound to pay no regard to that act of Parliament.

Mr. BARON GEORGE. Mr. MAC NALLY, no act of Parliament was given or offered in evidence.

Mr. ATTORNEY GENERAL. And my lord, the learned gentleman will please to recollect, that I said, I would not resort to such evidence.

Mr.

MR. MAC NALLY. I have not asserted that the act of Parliament was given or offered in evidence, but it was certainly alluded to in Mr. ATTORNEY's statement of the case on the part of the Crown; and therefore I thought it necessary to take notice of it, as every thing that falls from that gentleman must have weight.

Gentlemen, I have said you should not notice the act of Parliament alluded to—and I also say, neither should you notice by taking into contemplation the verdict of yesterday, delivered by another jury, and also alluded to by the ATTORNEY GENERAL; there is no connection between the cases. In criminal cases, a verdict on one trial is not evidence on another: I do not say the verdict was offered in evidence, but I do say it was stated, and every thing stated must be impressive; but you are to come here without regard to any matter or fact but what you may hear this day, from the witnesses produced in open court, and sworn upon their oaths to tell the truth. You, as judges of fact, are to restrain your attention to the solemn oath you have yourselves taken "well and truly to try the issue according to the evidence."—What issue are you to try?—You are to try, whether the Prisoner, from the testimony given, has done any open deed to convince you that he intended, and conspired with others, in furtherance of that intention, to overturn the Government, and bring the King to death.

Gentlemen, I agree to the law as laid down by the counsel for the crown, that every means taken to overturn the Government by force, constructively brings the person of the King into danger, and is an overt act of treason, in compassing and imagining his Majesty's death.—But let us look to the evidence as it applies to the prisoner.—

Gentlemen, the evidence to support that which is the most serious of all accusations, that is, as the indictment charges it, conspiring, contriving and intending to subvert and change the Government, and to depose the King and bring him to death; depends upon the testimony of gentlemen against whose credit no impeachment lies, no objection has been made. But recollect their evidence—recollect that neither Mr. *Wilson*, the Chief Peace Officer, nor Lieutenant *Coulman*, nor any other of the witnesses examined, to prove the actual existence of rebellion on the 23d of July last, though all present in the scene of action, have expressed

pressed one single word against the prisoner. A printed paper has been produced as evidence of the intent of the conspirators; my objection to the reading of that paper as evidence against him was over-ruled by the Court—and legally over-ruled no doubt—you have heard the contents of that paper, but you have heard nothing in that paper or proclamation that goes to shew that the prisoner ever assented to, or was ever acquainted with its contents:—and Gentlemen, you will also recollect this circumstance, that though this proclamation was found, yet it was never published, and therefore so far as I am going to state, the prisoner must appear innocent of the intent held out by that proclamation, that of erecting a republic in Ireland, because there is no evidence to inform the jury that he was concerned in the composing, or in the printing of it—and of course could not have been influenced to act by any thing that is therein contained—for I say, it is clear he had no knowledge of its contents.

What is the evidence against this man, to prove the intent imputed to him by the indictment? It is that he held a pike diagonally—that he was arrested—that he struggled when a prisoner—and that he was brought before General Fox.—Then comes a material fact indeed not against but in favour of the prisoner—his conduct before the Commander in Chief.

Gentlemen, I will venture to assert that the Court will tell you this—that where a man is put upon confession, the purport of that confession, as it is legal evidence against him, so it is legal evidence for him, if brought forward on the part of the prosecution. Now the declaration of this man before General Fox, who is a Magistrate and a Privy Counsellor, has been given in evidence, and that confession is in his favour—therefore you will humanely lay his words near your hearts.—The law officers of the Crown might have suppressed this fact, but they, and the witness who swore to it have with a candour, which reflects the highest honor on their conduct, fairly brought it forward.—I do say that by the candour of the counsel for the Crown and a witness for the Crown, the man at the bar, stands acquitted.—I do say that if a man is to be condemned out of his own mouth, so where his words or declarations are made evidence, he is to be acquitted out of his own mouth. What has been sworn? The witness swears

swears that when brought before General Fox, the prisoner fell upon his knees, and upon his knees he declared "*he found the pike.*"—He made that declaration to General Fox; who was not only the Commanding Officer, but a Magistrate, surrounded at the time by armed men—in a moment where he dare speak nothing but truth, he solemnly declared "*he found the pike.*" This I say was a confession judicially taken, and as such is evidence that ought to have weight in favour of the prisoner.—If guilty, it is not such a declaration he would have uttered; no, he would have supplicated mercy for his crimes, and have offered to give information as atonement and as the condition for his life. I venture to put the merits of his case upon this declaration, and if it carries credence to your breasts, gentlemen, it must create acquittal upon the treasons charged of compassing the King's death and levying war; for it is evidence that he had not the intent charged in the first count, and that he was not armed for the purpose charged in the second of the indictment.

The truth of this declaration, I also humbly submit to your judgment is corroborated this way.—It appears, from the testimony of the witnesses for the Crown, that many pikes were thrown down in the streets and lanes in the vicinity of *Thomas-streets* on that night; and this man without any settled motive, without any previous intent, might have taken up that pike, almost involuntary, in the very moment when he was arrested, and the position in which he held it, shews that to have been the fact.—Mark, gentlemen, the pike lay before him and he took it up—but with what intent? There is no act of force proved—and had he designed to charge the King's forces the position described is not the position in which he would have held it.—

Gentlemen, negative proof is not undeserving of your consideration: You will therefore recollect there is no evidence of the prisoner's having communication with other persons at the time he made the noise after been apprehended, and what the noise was, whether it originated in terror, or in supplication, or whether it was a signal as has been insinuated, does not appear; the officer could not explain this otherwise, or impute it to any cause; you may recollect he said so, in answer to a question put by one of yourselves.

Let

Let me also draw your attention to this material fact—it appears, that the prisoner might have fled if he chose so to do. If he could fly, why should he stay? nor for the battle, because he did not attempt to strike the officer, or the serjeant, or the private soldier. There is no evidence to shew he acted in any hostile manner with the pike.—The evidence is, he found it—he took it up, he did not use it, and he surrendered himself a prisoner.

Gentlemen, I will not trouble you much with speaking upon that which the law humanely considers to be the duty of a jury, when there is a doubt upon the evidence; because if at this instant it were possible that your minds were made up to convict my client, I would create a doubt from the evidence I shall produce, extrinsic of the merits of his case,—that I will create a doubt from the excellence of my client's character.—I know it has been often said, from both the bar and the bench, that where the scales of evidence are even, where the beam trembles *in equilibrio*, if a doubt exists it should preponderate in favour of the party accused—this is a merciful rule of English law, that has never been questioned—but I will venture to extend the benign principle still further: I do venture to submit to you, as sound, and as legal, and just, and merciful doctrine, that in such a case as this, where the charge is so heinous and the punishment is so great, a case where nothing has been proved to support the treason imputed to the prisoner, but his temporary possession of a pike, the charge may be fairly and effectually resisted by character—that the evidence of an honest and unimpeached character is in itself sufficient to create a doubt, and that doubt being created ought to be conclusive to an acquittal.

God forbid that the indigent should not experience on every occasion, the full benefit of a good character; it is the poor man's most valuable property, and too often the only property he possesses. Many are the means of bringing forward evidence that might induce a doubt upon the minds of a jury: but the prisoner depends upon his character; upon the simplicity, and purity of his defence, he supplicates for an acquittal. If his case were corrupt, or if his mind was contaminated, he would neither want a fabricated defence nor suborned witnesses to support him—but here is not cause for the slightest imputation of perjury. The prisoner I say scorns such a mode of defence, he rests upon his character and known integrity; at the age of near
seventy

seventy years—he rests upon the value, which you should stamp upon loyal, honest and unimpeached conduct: it is a defence which every man could not make, but which, at this day, will have an effect upon your benevolence, and ensure for him an acquittal from a sentence of the most serious nature that can fall upon man. It is a charge on which if he be convicted the consequences are dreadful indeed.—I will not hurt your feelings, gentlemen of the jury—nor the feelings of the court—nor my own feelings, nor those of my unfortunate client by repeating that sentence. But permit me to urge this, it is a sentence of such severity as should caution you deliberately and humanely to weigh all you have heard—and especially the evidence you have yet to hear of the prisoner's character, and to recollect that his life depends on your decision and that there is one principle in our law, which illustrates its clemency, yet diminishes not its justice, and which is found in no other system of jurisprudence.—That it is better ninety and nine guilty persons should escape than that one innocent man should suffer?

JOSEPH HUBAND, Esq.

Examined by Mr. MAC NALLY.

Q. You are a Gentleman of the Bar.

A. Yes.

Q. Do you know the Prisoner?

A. I do.

Q. What business does he follow?

A. A Slater and plasterer.

Q. How long have you known him?

A. About six or seven years.

Q. What is his general character?

A. I cannot say I have heard his general character. I have known him, and cannot say I heard any thing against him: so that my evidence is negative. He worked for me in his trade, and also for the canal company, of which I am a member; in that intercourse I knew him. I understood he was not liked by the lower class of people in the canal harbour during the last rebellion.

THOMAS

THOMAS PALMER,

Examined by Mr. MAC NALLY.

Q. Where do you live?

A. In *Peter's-row*.

Q. What business do you follow?

A. A coach-maker.

Q. Are you acquainted with the prisoner?

A. I am.

Q. Do you know his general character as to loyalty?

A. I cannot say I know his general character. I wanted a flator, and he was recommended to me as a loyal man, by a loyal man, and he worked for me some time.

Cross-Examined.

Q. Did you enquire for a loyal flator?

A. No, I did not; but the prisoner was recommended to me as such.

Q. Who recommended him?

A. I will recollect his name shortly;—It was one *Wybrants*.

Q. Is he alive, and in *Dublin*?

A. He is.

Mr. *Wybrants* was called, but did not appear.

Lieutenant BRADY,

Interrogated by the Court.

Q. After the prisoner was brought to the barrack, he was brought to General *Fox*:—Can you say what space of time elapsed from his arrest till he was brought before the General?

A. More than an hour: perhaps near two.

Mr. MAC NALLY.

Q. In what part of the street did you take the prisoner?

A. In *Thomas-street*, near the narrow part.

THOMAS PALMER,

Again examined for the Prisoner.

Q. Where did the Prisoner live?

A. I know he did live at *James's-gate*.

Q. How long since?

A. About six weeks ago.

Mr. Justice FINUCANE.

Gentlemen of the Jury,

You have before you a case of as much simplicity, and as free from legal niceties and distinctions as well can be conceived. And when I consider my own insufficiency, it is certainly to me a matter of great consolation. It must also afford you great satisfaction, and to the unfortunate Prisoner at the bar, it is of the greatest advantage, that here are no nice distinctions or discriminations of law, no fine-spun deductions or inferences to perplex us; but the question to be tried is a simple question of fact, level to every man's understanding and capacity.

Gentlemen, the Prisoner stands indicted of two species of High Treason; but one of them so fully and so clearly comprehending the other, that when you try one, you try both. He stands charged with compassing, imagining and intending to deprive our Sovereign Lord the King of his Royal state, Crown and Government of this realm, and to put him to death: and also with raising, levying and making, in conjunction with several other men in arms, public insurrection, rebellion and war against our said Lord the King within this realm.

Now, Gentlemen, it is obvious to every man's understanding, that when the subjects rebel, and make war upon their Sovereign, not only his life is endangered; but the experience of all times shews, that when the subjects prevail in the warfare, the death of the King is an invariable consequence. For this we have only to look to the rebellion which broke out in these kingdoms in the reign of *Charles the first*, and to the rebellion which lately took place in the kingdom of *France*. In both countries, the unfortunate Kings fell victims to the rage of their subjects.

But,

But, Gentlemen, it is not necessary for us upon this occasion to perplex ourselves with enquiring what acts do, or do not amount to overt acts of compassing and imagining the death of the king. Questions which heretofore upon some late trials in *England* ran into great length, and admitted of much nice discussion and examination.

We have here a plain question before us, and to that we should confine ourselves, namely, whether an open public rebellion and war, such as is stated in the indictment, existed in this kingdom? and if there did, whether the Prisoner at the bar took any act or part in that rebellion and warfare?

And here it is necessary to observe to you, that it is not every rising or insurrection of the people, however numerous, or whatever acts of atrocity they may proceed to, that can amount to a rebellion, or levying war against the King.

No rising or insurrection of the people for purposes of a private nature, in which the insurgents are, or conceive themselves to be particularly interested, can amount to rebellion, or levying war against the King—such as when men of a particular trade have risen in large numbers to destroy what they conceived to be nuisances to their trade, such as engines of a new construction for shortening labour.—Or, where men conceiving themselves to be aggrieved by certain inclosures made in their neighbourhood; or by the erection of a turnpike in their neighbourhood, have risen in great numbers to pull down the particular enclosure, or to pull down the particular turnpike. Such risings being for the obtaining of private purposes, cannot amount to High Treason. So neither will a rising upon account of some private quarrel, although such quarrel should even happen to be with part of the King's forces;—nor a rising to kill and destroy a particular person, (although these are crimes of the greatest magnitude in themselves) does not amount to the crime of High Treason. This is expressly provided for by the statute of Treason itself, [*Foster* 208, 219.] But all risings and insurrections of armed men, for the obtaining by force any measure of a public nature, in which the insurgents cannot be supposed to have any private interest distinct from the rest of society;—as risings to overturn by force the Government of the country, and to substitute another form

form of Government in the place of it—these certainly amount to rebellion and levying war against the King. For the King is not only a component part of Government, but the foundation and source from which all the other members of Government derive their authority. So also risings to reform the law or religion of the country, for the redress of real or imaginary, national or public grievances, by force of arms, amount to rebellion and levying of war. For what is that, but in fact to subvert all Government, and to take the Government of the country into the hands of the insurgents?

The question, therefore, for you, gentlemen, to determine, if you shall find that a rising and insurrection did exist, is, *quo animo*, for what purpose was such rising had, whether for a private and particular purpose, in which the insurgents conceived themselves to have a private and particular interest, distinct from the rest of society?—Or, whether it was for a public and general purpose, such as I have before mentioned to you? And if you shall be of opinion, that the insurrection was for a public and general purpose, then your next enquiry must be, whether the Prisoner took any act or part therein?—For this purpose, you will please to look at the evidence which has been given.—[*Here the learned Judge minutely recapitulated the whole of the evidence, and after stating the testimony of the witnesses produced for the Prisoner—he proceeded*]—

The evidence of character being the only evidence produced on the part of the prisoner, is in general of no great weight in cases of this sort, but in the present instance it is defective.

The witnesses profess to know nothing of his character themselves—and can only say, they never heard any thing bad of him:—One of them says that he got a good character of him as a loyal man, from some person not produced.

It is said, that he lived in *James's-street*.—How far that will weigh with you, is for your consideration; whether he was connected with the throwing of the bottle, or the firing the shot, is also for your determination.

As to the evidence which has been given of the existing rebellion, it appears that great quantities of arms and ammunition were collected—great numbers of people coming from remote and distant parts, assembled and armed themselves

selves at this depot;—they attacked the King's troops, and a proclamation is found, avowing the object of the party who collected at this depot. So that, as to that, there seems to be but little doubt, and it was candidly admitted by the counsel who acted for the Prisoner,—and therefore the material question for you is, how far the Prisoner acted in support of it?—If you have any doubt upon the case, or if you shall think he had the pike innocently, you will acquit him. But if you shall have no doubt of his concurrence, your verdict must be the other way.

The Jury retired for five minutes, and found the Prisoner *Guilty*.

He was then put to the bar to receive sentence.

Mr. Justice FINUCANE. *Thomas Maxwell Roche*, you have been indicted of the highest of all crimes, compassing the death of the King, and raising and levying cruel war and rebellion in the city of *Dublin*. You have been tried for this offence, and upon the fullest and clearest evidence convicted; the evidence was such as to leave no doubt in the mind of any man who heard it. For my part, I lament most sincerely from my heart your unhappy fate, and that of those who have been deluded with you by your enemies into shameful combinations of this sort, against all social happiness, and for the overthrow of all government. I feel deluded as they are, that they are my countrymen and friends—that in their misery or prosperity every thing which is dear and valuable to me is involved; I cannot therefore but feel for them, and am surprised, that after so many unsuccessful attempts, they still suffer themselves to be deluded, year after year, in the pursuit of impossible benefits, by artful and designing persons, who promise them the wealth of the rich and the lands of the country—phantoms and notions of this sort never can be realised. The people of this country, before the introduction of French principles among us, were reckoned a shrewd and sensible people, But these phantoms raised in their minds, and introduced by French politics and principles have totally turned the heads of the unfortunate people of the country. How much easier is it, if riches were their object, to grow rich by honest industry, and the fair means which are in their power? Many instances may be adduced of men who, to
the

the knowledge of us all, have risen from humble rank to high station by honest industry, sobriety and frugality;—these are sure and certain means of growing rich. Why other means, dangerous, hazardous and uncertain are pursued, is really astonishing to me. I beseech every man who hears me to take warning by the fate of the unhappy man at the bar; let them pursue the honest means of growing rich, if riches be their object, and they cannot fail. I give this advice in sincerity, and from the purest affection and regard. It remains now only for me to pronounce the sentence of the law; which I do with as much pain as you can receive it.

(The learned Judge then pronounced the sentence in the usual form.)

And the Prisoner was executed the next day, in *Thomas-street*, pursuant to his sentence.

Counsel for the Crown.

Mr. Attorney General,
Mr. Solicitor General,
Mr. Plunket,
Mr. Mayne,
Mr. Townsend,
Mr. Ridgeway,
Mr. O'Grady.

Crown Solicitors,

T. and W. Kemmis.

Counsel for the Prisoner.

Mr. Mac Nally.

Agent,

A

R E P O R T

OF THE

PROCEEDINGS

IN

Cases of High Treason.

SPECIAL COMMISSION.

THURSDAY SEPT. 1. 1803.

Owen Kirwan was put to the bar—he was arraigned the day before upon the following indictment.

County of the City of Dublin, to wit. } THE Jurors of our Lord the King upon oath present that *Owen Kirwan*, late of *Plunket-street* in the City and County of the City of Dublin, Tailor, a subject of our said Lord the now King, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, as a false traitor against our said Lord the now King, his supreme, true, lawful and undoubted Lord, the cordial love and true and due obedience, which every true and dutiful subject of our said Sovereign Lord the King towards him our said Lord the King should bear, wholly withdrawing

No. 3. B and

and contriving and intending the peace and common tranquillity of this Kingdom to disquiet, molest and disturb, and the Government and constitution of this realm to change, subvert and alter, and our said Lord the King from the Royal state, title, honour, power, imperial crown and government of this his Kingdom to depose and deprive, and our said Lord the present King to death and final destruction to bring and put, he the said *Owen Kirwan*, on the 23d day of *July*, in the 43d year of the reign of our said Lord the King, at *Plunket-street* afore said, in the City and County of the City of *Dublin* afore said, with force and arms falsely, wickedly and traitorously did compass, imagine and intend our said Lord the King then and there his supreme, true and lawful Lord off and from the royal state, crown, title, power and government of this Realm to depose and wholly deprive, and our said Lord the King to kill, and bring and put to death.

And that to fulfil, perfect and bring to effect his most evil and wicked Treason and treasonable Imaginations and Compassings afore said, he the said *Owen Kirwan*, as such false traitor as afore said, on the said 23d day of *July*, in the said 43d year of the reign of our said Lord the King, at *Plunket-street* afore said, in the City and County of the City of *Dublin* afore said, with force and arms falsely, maliciously and traitorously did conspire, confederate and agree to and with divers other false traitors, whose names are to the Jurors afore said unknown, to raise, levy and make a public and cruel insurrection, rebellion and war, against our said sovereign Lord the King within this Kingdom.

And afterwards to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms at *Plunket-street* afore said, in the City and County of the City of *Dublin* afore said the said *Owen Kirwan*, as such false traitor as afore said, in further prosecution of his treason and treasonable purposes afore said, did arm himself with and did bear and carry a certain weapon called a pike, with intent to associate himself with divers other false traitors, armed with guns, swords and pikes, whose names are to the said Jurors unknown, for the purpose of raising, levying and making insurrection, rebellion and

and war against our said Lord the King, and of committing and perpetrating a cruel slaughter of and amongst the faithful subjects of our said Lord the King.

And that afterwards to wit, on the said 23d day of *July*, in the said forty third year of the reign of our said Lord the King, with force and arms at *Plunket-street* afore said, in the City and County of the City of *Dublin* afore said, the said *Owen Kirwan* as such false traitor as afore said, in further prosecution of his treason and treasonable purposes afore said, with a great multitude of persons whose names are to the Jurors unknown, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords and pikes, being then and there unlawfully and traitorously assembled and gathered against our said Lord the King, did prepare, levy, ordain and make public war against our said Lord the King, against the duty of the allegiance of him the said *Owen Kirwan*, against the peace of our said Lord the King his crown and dignity, and contrary to the form of the statute in such case made and provided.

And the said Jurors of our said Lord the King upon their oath do further present that the said *Owen Kirwan* being a subject of our said Lord the now King, and not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, and entirely withdrawing the love and true and due obedience which every subject of our said Lord the King, should and of right ought to bear towards our said Lord the King, and wickedly devising and intending to disturb the peace and public tranquillity of this Kingdom, on the twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, with force and arms, at *Plunket-street* afore said, in the City and County of the City of *Dublin* afore said, unlawfully, maliciously, and traitorously, did compass, imagine, and intend to raise and levy war, insurrection, and rebellion, against our said Lord the King within this kingdom—and in order to fulfil and bring to effect the said traitorous compassing, imaginations and intentions last mentioned of him the said *Owen Kirwan*. He the said *Owen Kirwan*, afterwards to wit, on the twenty-third day of *July* in the said forty-third year of the

the reign of our said Lord the King, with force and arms, at *Plunket-street* aforesaid, in the City and County of the City of *Dublin* aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a war-like manner, to wit, with swords, guns, and pikes, being then and there unlawfully, maliciously, and traitorously assembled and gathered together against our said Lord the now King, most wickedly, maliciously, and traitorously did ordain, prepare, levy, and make public war against our said Lord the King, his supreme and undoubted Lord, contrary to the duty of the allegiance of him the said *Owen Kirwan*, against the peace of our said Lord the King, his Crown and Dignity, and contrary to the form of the Statute in such case made and provided.

The Prisoner pleaded *Not guilty*.

And being asked, was he ready for trial, he answered he was—he was then put to his challenges, and the following Jury was sworn, after eight peremptory challenges by him and three set by on the part of the Crown:

William Edmiston,
Wm. Mullock,
Wm. Andrews,
Richard Babington,
Henry Browne,
Wm. Murray,

Henry Peile,
Wm. M'Aulay,
Alex. Montgomery,
John Sale,
Andrew Lee,
Arch. Buchannan.

The Prisoner was given in charge.

Mr. O'GRADY opened the Indictment.

MR. ATTORNEY GENERAL.

My Lords and Gentlemen of the Jury,

In this case, the Prisoner at the bar is accused of High Treason, and you are upon your oaths, to attend to the evidence which will be laid before you, and to decide upon that evidence, whether he is guilty of the charge or not.—The nature of the Indictment and the Overt Acts to support it, will be fully explained to you by

by the Court.—I shall call your attention to the nature of the evidence we shall lay before you, in order to shew the part which the Prisoner took in the rebellion. Your consideration, gentlemen, will be confined entirely to two points:—first, whether there existed a rebellion in the City upon the 23d of *July* last—and secondly, whether the Prisoner participated in that rebellion, either by concurring in the design, or wilfully aiding in the execution of it.—If you believe the facts which I am instructed to lay before you, the case will be as clear as the law arising upon them.

I am instructed to state to you, that upon the evening of the 23d of *July* last, it was observed that a number of people went into the Prisoner's house in *Plunket-street*, and that in the course of the same evening he frequently left his house with a green bag in his hand, and directed his course to *Thomas-street*. He has been employed as a vender of cast clothes—and for any thing I know, might have used the bag in that way. After he had gone and returned several times, he was observed to stand at the door with another person as it were in consultation, and at 9 o'clock a rocket was observed to rise from *Thomas-street*, which passed nearly over the Prisoner's house.—The Prisoner immediately exclaimed, "Boys! there's a Rocket!"—He desired them to turn out, and they did turn out, all armed with Pikes. He then put himself at the head of them with a Pike upon his shoulder, and threatened vengeance to all those who should decline to assist.—At this time he wore a green-coloured coat, and his wife fearing he would be remarked in such dress, followed him and forced him to put on another. His appearing thus armed upon the signal of a rocket will be material when you consider that in the Rebel Depot which was discovered near *Thomas-street*, sky-rockets were found, which were calculated for signals in different parts of the town. The Prisoner then called out, "The town is our own!"—You, gentlemen, will consider what meaning is to be attributed to his conduct and to his expressions, and whether they do not clearly evince his guilt both as a conspirator and an actor. He immediately went in the direction towards *Thomas-street*, and in half an hour after, another party headed by a man in a scarlet uniform halted at the Prisoner's

Prisoner's house, were there furnished with refreshment and then proceeded to *Thomas-street*.

These circumstances are so strong, that they do not involve the prisoner merely as having a pike in his hand, but they implicate him as a leader, taking an active part and heading some of the insurgents to the scene of action.

Gentlemen, if these facts shall be proved, it will only remain for you to pronounce your verdict upon them— but before I conclude, I am to entreat, that you will discharge from your minds any feelings or prepossessions that you may have received upon this subject, and that you will attend solely to the evidence, which we shall submit to your consideration; it is of such a nature as strongly leads me to think that we are not mistaken in the charge which we have brought against the Prisoner, but if it shall appear that we are, I shall very strongly participate in the happiness which you will feel in acquitting him of the accusation.

Edward Wilson, Esq. examined, gave the same account as before, *Vide*, page 37, No. I.

Lieutenant *Wheeler Gouldman* examined, gave the same evidence as before, *Vide*, page 48, No. I. Among the articles found, the sky-rockets were noticed as particularly applicable in the present case.

Thomas Rice proved the Proclamation as upon the former trials.

Benjamin Adams,

Examined by Mr. MAYNE.

Q. What is your employment in life?

A. A silk weaver.

Q. Where do you live?

A. In *Plunket-street*.

Q. Whereabouts?

A. At No. 12, near *Francis-street*.

Q. Do you know the prisoner?

A. I do. (Witness identified him.)

Q. How long have you known him?

A. Ten or twelve years.

Q. Where

Q. Where does he live?

A. At No. 64, *Plunket-street*.

Q. Is that near where you lived?

A. It is almost opposite.

Q. Do you recollect the evening of the 23d of July?

A. I do.

Q. Do you recollect having taken notice of anything particular at the house of the prisoner on that evening?

A. I do; in the evening of the 23d of July, I saw the prisoner go up *Plunket-street* towards *Thomas-street*, with a green bag.

Q. How often?

A. I cannot say; but it was several times.

Q. Was the bag full or empty as he went out?

A. It was half full.

Q. Was it so when he returned?

A. No; it was empty.

Q. How long did he stay away each time?

A. About twenty or five and twenty minutes.

Q. While he was thus going back and forward, did you observe any thing particular at his house?

A. I saw a parcel of men going into his place.

Q. Did they go in altogether?

A. No they went in separately.

Q. What more did you observe?

A. Between eight and nine o'clock, he was leaning upon the post of the door, speaking to another man.

Q. Was it day-light or dark when you observed that?

A. It was not dark; it was between the two lights—I could discern them distinctly.

Q. Where were you?

A. Looking out from my window.

Q. What window?

A. In the three pair room.

Q. What did you observe?

A. They were discoursing, I cannot tell about what.

Q. Did any thing particular happen?

A. There was a rocket, which came from towards *Thomas-street* clear over *Plunket-street*, where I was.

Q. What happened then?

A. *Owen Kirwan* was at this time standing at this door, and when he saw the rocket, he took off his hat and said, "There is the rocket, my boys." He then returned

returned into his own shop—he had a green frock coat upon him, and his wife was standing there—she got hold of the sleeve of his coat, and pulled it off, and handed him a cotton jacket which he put on, and he took a pike in his hand and put it on his shoulder. When he got the pike upon his shoulder, he said, “God’s blood, boys, turn out, the town is our own to-night!”

Q. What is his employment?

A. He is a cast clothes man.

Q. Has he any other employment?

A. Not that I know of.

Q. What more passed?

A. He said—“Any man that does not turn out to-night, shall surely be put to death to-morrow.”

Q. What happened after that?

A. He and the party ran up the street, and they turned the corner towards *Thomas street*.

Q. How many were of the party?

A. About eight or ten.

Q. Where did they come from?

A. From the Prisoner’s house.

Q. Were they armed?

A. They were.

Q. What arms?

A. They had pikes.

Q. Had the Prisoner a pike when he went towards *Thomas street*?

A. He had.

Q. Did you see any thing particular afterwards?

A. In about half an hour, I saw a party of men with pikes come down the street.

Q. Were they armed?

A. They were.

Q. With what?

A. With pikes.

Q. How many do you suppose that party consisted of?

A. I cannot say, for they ran very fast; I could not count them.

Q. Did you see any thing further?

A. Yes; in about a quarter of an hour after that, fifty or seventy men with pikes, came down the street.

Q. Was

Q. Was that a larger party than the former?

A. Much larger.

Q. What opportunity had you of reckoning them?

A. I am full, if I had reckoned them, they were above 100; but I speak rather below the number, and am sure there were 70.

Q. Did they stop in the street?

A. They did.

Q. Where?

A. At *Kirwan's* house, and a little lower down.

Q. Did they get any thing?

A. Yes; some beer.

Q. Where was that?

A. At *Kirwan's*—his wife had got it in before they came.

Q. Did you hear any firing that evening?

A. I did.

Q. Was it at this time?

A. No, a little after.

Q. Where?

A. in the direction of the *Coombe*.

Q. Did you hear any other firing.

A. I did, a few shots, but not together.

Q. Did you see the Prisoner again that night?

A. No, sir.

Cross-Examined by Mr. CURRAN.

Q. Where do you live, do you say?

A. In *Plunket-street*.

Q. Near the Prisoner?

A. Yes, sir, nearly opposite.

Q. Had you been in habits of much intimacy with him?

A. No, only seeing him pass by.

Q. You were not acquainted with him?

A. I have spoken to the man, and bid him the time of the day.

Q. Might he have seen you at the time of the conversation?

A. He could.

Q. Did he speak to you?

A. No, sir.

No. 3.

C

Q. He

- Q. He did not speak ?
- A. Not to me.
- Q. Did he speak in a whisper ?
- A. He did not speak at first so as that I could hear him from the window where I was.
- Q. You saw him go out with a bag ?
- A. I did.
- Q. Do you think there is any great harm in carrying a bag with something in it which you do not see ?
- A. No, sir, many a man carries a bag without any harm.
- Q. Do you not believe he is a cast-clothes man ?
- A. I believe he was.
- Q. Is it not frequent for men in that business to carry clothes which they sell to people in a bag ?
- A. I believe it is.
- Q. Do you not believe it is the common practice of tailors and persons of that kind, to carry home clothes in a bag, to prevent their being dropped in the street or dirtied ?
- A. I believe so.
- Q. Had he a stall in which he sold clothes ?
- A. He had.
- Q. Do you not believe that the clothes which were sold in the Market-house, were taken from the house to be so sold ?
- A. Yes.
- Q. Then there were two occasions, upon which the bag was used—one to take clothes to his customers, and another to take them to a place of sale.—He said every man who did not turn out, would be put to death the next day ?
- A. He did.
- Q. Did he say that to you ?
- A. No.
- Q. Did he ask you to go out ?
- A. No, he did not.
- Q. When did you disclose the fact, that you knew any thing about what you have given evidence of ?
- A. I never told any one, till I told it to my father.
- Q. How long after the 23d of July was that ?
- A. The next day.
- Q. Then you told your father ?
- A. Yes.

A. Yes.

Q. To whom did you tell it next?

A. One Mr. Dalton, belonging to the Rotunda Division.

Q. To whom next?

A. He desired me to go to the Major.

Q. To what Major?

A. Major Sirr.

Q. There was no kind of intimacy between you and the prisoner—of course, you bore him no ill will?

A. I never did.

Q. Are you a married man?

A. I am.

Q. You had no difference with the prisoner?

A. No.

Q. Was there never any dispute between you and the prisoner, or between you and the prisoner's wife, on account of any circumstance respecting your own wife?—Recollect yourself.

A. Not between me and the prisoner, or his wife.

Q. I will lead your memory to it—you and your wife do not live together?

A. We do not.

Q. Was she received into the prisoner's house after she parted with you?

A. One night she was.

Q. How long ago is that?

A. To the best of my opinion it is a year and a half ago.

Q. Did she ever return to you again?

A. She did.

Q. Does she live with you?

A. No, but we converse constantly together:—we do not live together on account of her mother.

Q. Did you ever express any dissatisfaction at her staying that night at the prisoner's?

A. I never did.

Q. (By the Court.)—You said the prisoner spoke in a whisper, or so as not to be heard?

A. Yes, when he conversed with the man.

Q. When he said, "Turn out, the town is our own"—was that in a whisper?

A. No, it was loud.

Q. Did he speak loud until the rocket went off?

A. He did not—but then he spoke loud.)

Mr. CURRAN. What kept you at the window all this time?

A. I was looking out the whole night—I had sprained my wrist, and was not able to work, and was at home all that day—my father was at the door in the evening, and a woman, one of his tenants, pulled him by the coat, and desired him to go in, saying, “This is the night there is to be a massacre.”—He came in and shut the door, and I went to the window, and remained there all night.

Stewart Hume Douglas, Esq.

Examined by Mr. O’GRADY.

Q. You are an officer in his Majesty’s service?

A. I am.

Q. Were you on guard the 23d of July last?

A. I was.

Q. Did you command any party?

A. The light company of the 21st regiment.

Q. Where were they?

A. At the *Coombe Barrack*.

Q. Did any thing particular occur to you that night?

A. Nothing, until I was told by Magistrate *Drury*, that there was an expectation of a rising that night.

Q. In consequence of that, did you go out with him.

A. I did:—the magistrate first took a Serjeant and twelve men to patrol the streets—but a mob appeared coming from *Meath-street* towards the Guard-house, I ordered all the men out and to prime and load.

Q. (*By the Court.*) Was the mob armed?

A. I cannot say at that time—it was growing dark and they did not advance upon me.

I drew out my company, and marched them in two divisions towards the mob.

Q. Did you meet with any obstruction?

A. Not till I came to the top of *Meath-street* near *Thomas-street*, when I saw in *Thomas-street* between 150 and 200 men drawn up with pikes on their shoulders—I there halted my men, and I asked the Magistrate permission to fire, which he refused.

Q. Did

Q. Did you do any thing to induce him to allow you to fire?

A. I repeatedly urged him, and my men frequently asked permission to fire.

Q. What further occurred?

A. The Rebels wheeled back from their centre, very regular.

Q. (*By the Court.*) What do you mean by regular—in a military manner?

A. Yes, me Lord.

Q. Proceed and mention what passed.

A. They then came to the charge with their pikes.

Q. What do you men by the charge?

A. They brought their pikes down to the charge—in a horizontal position—after a great deal of entreaty, and another great mob collecting in my rear, the magistrate permitted me to advance, but desired me not to fire, as it was not in his district.--When I got leave to advance, a good many threw down their pikes, which created some confusion among the rest, and they retreated towards the Market-house of *Thomas-street*—one man about 60 or 70 years old, made an attempt with a pike upon my men—my men threw up his pike with their arms, knocked him down, and piked him with his own pike—I then marched down as far as the Market-house, when my men dispersed great numbers of people armed with pikes, and drove them from the Market-house out thro' the pillars; my party collected between 40 and 50 pikes, which we brought away—upon getting out of the Market house, I asked Mr. *Drury* where he intended to take me—he said—down to my own Barrack, where he would allow me to fire if any attack was made. I then marched down *Francis-street*, and when I arrived at the Barrack, I drew my men up into two parties—one fronting *Meath-street*—and the other to *Francis-street*, and in about ten minutes after, I was charged by the rebels from *Francis-street*—two or three men came forward and fired, by which two of my men were wounded, after which the party charged with a great shout—I ordered my men to fire, which seemed to check the rebels—whoever was their leader, we heard him endeavouring to bring them on;

on; but when they got the second volley, they fled, and the part who had turned the corner of *Francis-street*, received the third volley.

Q Did you kill any of them?

A. I did not like to advance my men in the dark, for fear of being surrounded, as if I had gone up *Francis-Street*, the rebels might come upon my rear from the *Poddle*, and another small street near it—but as soon as day-light appeared, I found four men lying dead within a few yards of my station, and about 15 pikes—a gentleman afterwards told me, he saw them carrying 14 or 15 dead bodies up through *Francis-Street*.

Cross-examined by Mr. MAC NALLY.

Q. You did not see the Prisoner there?

A. No, I did not.

Q Did the Magistrate remain with you during the fight?

A. He did not.

Q. I thought he promised to give you permission to fire as soon as you arrived at the Barrack—where did he go to upon the commencement of the fight?

A. He went into his house.

Q. Oh—I suppose he gave you the word of command from the drawing-room window?

A. No, he did not wait to give any word.

Mr. MAC NALLY, I forgot—he is an officer of *peace*.

JOSEPH ADAMS,

Examined by the ATTORNEY GENERAL.

Q. Are you acquainted with *Benjamin Adams*?

A. Yes, he is my son.

Q. Were you in the city of *Dublin* upon the evening of the 23d of *July* last?

A. I was in *Plunket-street*, at No. 11, in my own house.

Q. When did you first hear of any disturbance that evening?

A. At a quarter past nine, I was nailing up some boards at a cellar, some person said the days were growing short, and I looked at my watch, I then saw some men with pikes, but at first thought they were watchmen—I said there were something the matter—and a woman

woman took me by the sleeve and pulled me in and then followed me, and said, we will all be massacred that night.

Q. Why did she not tell you that in the street?

A. She was afraid of the men:—but she came up to me and took me a one side, and said, *that was my time*—I flew up stairs—looked out of the window and saw a number of pikemen.—I thought I should be killed, when the man came and desired “all the boys to turn out to arms.” My wife desired me to escape and leave her to the mercy of the world. I flew up to the top of the house through the dormant window, and then I saw five or six men upon the top of the house, who, I thought, would do me out—but they were persons who had ran up like myself—we staid in the valley of the roof till near one o’clock.

Q. Were you a yoeman at that time?

A. I was for about a week before.

Q. Did you see any thing further?

A. When I heard the long roll of the army—

Q. What do you mean by the long roll?

A. The fire from the Coombs, like a hedge firing, I said to the people we might go down, for that they had got such a supper they would not come back. We then went down and staid together till near four, when I got to parade.

Q. Was your son Benjamin at home that night?

A. He was at home all that night.

Q. You live opposite to Kirwan’s?

A. I do.

Q. Did you see him the next day?

A. No, nor for a week after—The Tuesday week after I saw him at his own door.

Q. Had he been absent from home so long a time before?

A. No—that I recollect.

Cross-examined by Mr. CURRAN.

Q. Were you intimate with the prisoner?

A. No, we sometimes spoke to each other, he has come across the way to me, and I have spoken to him.

Q. He is a married man?

A. Yes.

Q. Has

Q. Has children ?

A. Yes—three.

Q. One at nurse ?

A. I can't say.

Q. Did not you hear, that he went to the country to see a child at nurse ?

A. I did not.

Q. He was taken at his own house ?

A. He was.

Q. (By the ATTORNEY GENERAL :)—When was the prisoner arrested ?

A. He was brought a prisoner to the hall where the Liberty Rangers were on guard, the *Tuesday* or *Wednesday* week after the rebellion.

Extracts from the proclamation were read—for which vid. page 54. No. I. and the case was closed.

Mr. CURRAN.

My Lords, and Gentleman of the Jury,

It has now become my duty to state to your Lordships, and to you, gentlemen, the defence of the prisoner at the bar.—I was chosen for that very unpleasant task without my concurrence or knowledge, but as soon as I was apprized of it, I did accept it without hesitation. To assist an human being under the most awful of all situations, trembling on the dreadful alternative of honourable life, or ignominious death, was what no man, worthy of the name could refuse to man—but it would be peculiarly base in a person who has the honour of wearing the King's gown to leave his subject undefended, until a sentence pronounced upon him had shewn, that neither in fact or in law could any defence avail him. I cannot however but confess I feel no small consolation when I compare my present with my former situation upon familiar occasions. In these sad times to which I allude, it was frequently my fate to come to the spot where I now stand, with a body sinking under infirmity and disease, and a mind broken with the consciousness of public calamity, created and exasperated by public folly. It has pleased Heaven that I should live to survive both these afflictions, and I am grateful for its mercy. I now come hither through a composed

composed and quiet City, I read no expression in any face, save those that mark the orderly feelings of social life, or the various characters of civil occupation. I see no frightful spectacle of infuriated power, or suffering humanity—I see no tortures—I hear no shrieks—I no longer see the human heart charred, in the flame of its own vile and paltry passions—black and bloodless, capable only of catching and communicating that destructive fire by which it devours, and is itself devoured. I no longer behold the ravages of that odious bigotry, by which we were deformed, degraded, and disgraced—a bigotry against which no honest man should miss an opportunity of putting his countrymen of all sects and descriptions upon their guard: it is the accursed and promiscuous progeny of servile hypocrisy, of remorseless lust, of power, of insatiate thirst of gain, labouring for the destruction of man under the specious pretences of religion, her banner stolen from the altar of God, and her allies congregated from the abysses of hell, she acts by votaries to be restrained by no compunction of humanity, for they are dead to mercy—to be reclaimed by no voice of reason, for refutation is the breath on which their folly feeds; they are outlawed, alike from their species and their Creator; the object of their crime is social life, and the wages of their sin, social death; for although it may happen that a guilty individual should escape from the law that he has broken, it cannot be so with nations; their guilt is too extensive and unwieldy for such escape; they may rest assured that providence has in the natural connexion between causes and their effects, established a system of retributive justice, by which the crimes of nations are sooner or later avenged by their own inevitable consequences. But that hateful bigotry, that baleful discord which fired the heart of man and steelled it against his brother, has fled at last, and, I trust, for ever. Even in this melancholy place, I feel myself restored and recreated by breathing the mild atmosphere of justice, mercy, and humanity. I feel I am addressing the parental authority of the law—I feel I am addressing a jury of my countrymen, my fellow subjects and my fellow christians, against whom my heart is waging no concealed hostility—from whom my face is disguising no latent sentiment of repugnance or disgust. I have not

now to touch the high raised strings of any angry passions in those that hear me; nor have I the terror of thinking, that if those strings cannot be snapt by the stroke, they will be only provoked into a more intigated vibration. Whatever I address to the Court in point of law, or to the Jury in point of fact, will be heard not only with patience, but with an anxious desire to supply what may be defective in the defence.

I must observe, that this happy change in the minds and feelings of all men, was the natural consequence of that system of mildness and good temper which has been recently adopted; and which I now exhort you, Gentlemen, to imitate and improve upon; that you may thereby demonstrate to ourselves, to *Great Britain*, and to the enemy, that we are not that assemblage of fiends which we had been alleged to be, unworthy of the ordinary privilege of regular justice, or the lenient treatment of a merciful government.

It is of the utmost importance, Gentlemen, to be on your guard against the wicked and mischievous representation of the circumstances which have called you now together; you ought not to take from any unauthenticated report those facts which you can have directly from sworn evidence. I have heard much of the dreadful extent of the conspiracy against the country—of the narrow escape of the government from a danger, permitted so to increase by a want of vigilance and caution. You now see the fact as it is; by the judicious adoption of a mild and conciliatory system of conduct, what was six years ago a formidable rebellion, has now dwindled down to a drunken, riotous insurrection, disgraced certainly by some odious atrocities; its objects, whatever they were, no doubt highly criminal; but as an attack upon the state, of the most contemptible insignificance. I do not wonder, that the patrons of burning and torture should be vexed that their favourite instruments were not employed in recruiting for the rebellion. I have no doubt, but that had they been so employed, the effect would have followed, and that an odious, drunken insurrection would have easily been swelled into a formidable rebellion; nor is it strange, that persons so mortified, should vent themselves in wanton exaggerated representation and in unmerited censure—in slandering the nation in the person
of

of the viceroy, and the viceroy in the character of the nation; and that they should do so, without considering that they were weakening the common resources against common danger, by making the different parts of the empire odious to each other; and by holding out to the enemy, and falsely holding out, that we were too much absorbed in civil discord to be capable of effectual resistance. In making this observation, my wish is merely to refute a slander upon my country. I have no pretension to be the vindicator of his Excellency, whose person I do not know I have ever seen—at the same time, when I am so necessarily forced upon the subject, I feel no disposition to conceal the respect and satisfaction with which I see the king's representative comport himself, as he does, at a crisis of no little anxiety, though of no considerable danger. If we believe the evidence we have heard, I think it was a proof of firmness and good sense not to discredit his own opinion of his confidence in the public safety, by any ostentatious display of unnecessary open preparation, and I think he did himself equal honor, by preserving his usual temper, and not suffering himself to be exasperated by the event when it did happen, into the adoption of violent or precipitate measures. Perhaps I may even be excused, if I confess that I am not wholly free from some professional vanity, when I see, that the descendant of a great lawyer is capable of remembering what without the memory of such an example he perhaps might not have done, that even in the moment of peril, *the Law* is the best safeguard of *the Constitution*. At all events I feel, that a man who at all times has so freely censured the extravagancies of power and force, as I have done, am justified, if not bound, by the consistency of character, to give the fair attestation of my opinion to the exercise of wisdom and humanity wherever I find them, whether in a friend or a stranger, and therefore I accede most heartily to what Mr. ATTORNEY GENERAL has stated respecting the slowness and deliberation with which this Commission has proceeded.

I hope, Gentlemen, that these preliminary observations have not been wantonly and irrelevantly delaying you from the question which you are to try, and which I am ready to enter into; but there still remains a circumstance to be observed upon for a mo-

ment before you enter upon the real subject of your enquiry, the guilt or innocence of the Prisoner :—the fact which has been so impressively stated, and which I am sure the ATTORNEY GENERAL would lament should produce the consequences not intended by him in such statement, the never to be too much lamented fate of that excellent man, my Lord KILWARDEN. It is impossible for any man of feeling, having a head or heart, not to look at the infernal transaction with the utmost horror and indignation—I had known him for 20 years—no man possessed more strongly than he did, two qualities—he was a lover of justice and of humanity almost to a degree of weakness, if it can be a weakness. But let us not wantonly slander the character of the nation by giving any countenance to the notion, that the horror of such a crime could be extended further than the actual perpetrators of the odious deed. The general indignation, the tears that were shed at the sad news of his fate, shew that we are not that nest of demons, on whom any general stigma could attach from such an event. The wicked wretch himself, perhaps, has cut off the very man through whose humanity he might have escaped the consequences of other crimes, and by an hideous aggravation of his guilt, has given another motive to providence to trace the murderers steps, and secure the certainty of his punishment. But on this occasion, you, Gentlemen, of the Jury, must put it out of your minds, and think nothing of that valuable man, save his last advice, “that no person should perish, but by the just sentence of the law;” and that advice I hope you will honour, not by idle praise, but by strict observance.

As to the evidence, give me leave to advert to one circumstance, which ought to be removed from your minds; it was adverted to before, and I do not believe it was resisted by the officers of the Crown; it occurred in the former case.—No act of parliament or commission under the great seal can be evidence in such a case as this.

MR. ATTORNEY GENERAL. My Lord, I hope Mr. CURRAN will excuse me for interrupting him.—No allusion was made to the act of parliament or the commission in this case; and though I did advert to them in the former

former, no attempt was made to rely upon them as evidence.

MR. CURRAN. I mentioned the circumstance in the confidence that it would be given up as not applicable in evidence, and the learned Gentleman will please to recollect, that he referred to the first statement made by him, and even to the verdict found yesterday, and therefore it is right upon my part to take notice of that which might make an impression upon the Jury.

LORD NORBURY. This much we must say, that no notice has been taken by the Bench of any act of parliament or any other document but what has been proved in evidence before us.

MR. CURRAN. If I had not been interrupted by the anxiety of the ATTORNEY GENERAL, I would have added, that as the statute, if offered, would not be evidence, much less was the statement evidence. He also suggested that notoriety would be evidence; but however that may be with respect to a grand jury, it can have no influence with a petit jury. It may as well be said, that the notoriety of a man having committed a crime, is evidence of his guilt. Notoriety is at best another name for reputation, which cannot even by law be given in evidence in any criminal case, and which *ex fortiori* could not sustain a verdict of conviction.

MR. JUSTICE FINUCANE. Public war is always taken from notoriety.

MR. CURRAN. But I do not think, that insurrection can take its character of innocence or guilt from notoriety. And will add to the Jury what I am certain will meet the acquiescence of the Bench, that though the Jury should leave their houses without any doubt of the fact, yet it is their duty to forget the notoriety and attending to their oaths, decide according to the evidence, the probability of such a conspiracy at the present time. It is clear from the evidence, that it cannot be imputed to any particular sect, or party, or faction; because no sect or faction could fail (had they acted in it) of engaging

gaging one hundred times the number of deluded instruments in their design. We may then fairly ask, is it likely, that the country at large, setting even a part all moral tie of duty or allegiance, or the difficulty or the danger, could see any motive of interest to recommend to them the measure of separating from *England* or fraternizing with *France*; whether is there any description of men in *Ireland*, who could expect any advantage from such a change, and this reasoning is more pertinent to the question, because politics now are not as heretofore a dead science in a dead language: they have now become the subject of the day; vernacular and universal, and the repose which the late system of Irish government had given the people for reflection, had enabled them to consider their own condition, and what they or any other country could have to hope from *France*, or rather from their present master. I scorn to allude to that person merely to scold or revile him. Unbecoming obloquy may shew that we do not love the object; but not that we do not fear him. What is the present condition of *Bonaparte*? a stranger, an usurper, getting possession of an extensive, proud, volatile and capricious people; getting that possession by military force,—able to hold it only by force, to secure his power he found, or thought he found, it necessary to abolish all religious establishments, as well as all shadow of freedom;—he has completely subjugated all the adjoining nations.

Now, it is clear, there are but two modes of holding states, or the members of the same state together, namely, community of interest or predominance of force. The former is the natural bond of the *British* empire. Their interests, their hopes, their dangers can be no other than one and the same, if they are not stupidly blind to their own situation. But force only can hold the acquisitions of the French Consul. What community of interest can he have with the different nations that he has subdued and plundered?—clearly none,—can he venture to establish any regular and protected system of religion among them? Wherever he erected an altar, he would set up a monument of condemnation and reproach upon those wild and phantastic speculations, which he is pleased to dignify with the name of philosophy; but which other men, perhaps because

cause they are endowed with a less aspiring intellect, conceive to be a desperate anarchical atheism; giving to every man a dispensing power for the gratification of his passions; teaching him, that he may be a rebel to his conscience with advantage, and to his God with impunity. Just as soon would the government of *Britain* venture to display the crescent in their churches, as an honorary member of all faiths shew any serious reverence to the cross in his dominions. Apply the same reasoning to liberty. Can he venture to give any reasonable portion of it to his subjects at home, or his vassals abroad? the answer is obvious: sustained merely by military force, his unavoidable policy is to make the army every thing, and the people nothing. If he ventured to elevate his soldiers into citizens, and his wretched subjects into freemen, he would form a confederacy of natural interest between both, against which he could not exist a moment. If he relaxed in like manner with *Holland* or *Belgium* or *Switzerland* or *Italy*, and withdrew his armies from them, he would excite and make them capable of instant revolt. There is one circumstance which just leaves it possible for him not to chain them down still more rigorously than he has done, and that is the facility with which he can pour military reinforcements upon them in case of necessity, but destitute, as he is, of a marine, he could look to no such resource with respect to any insular acquisition; and of course he should guard against the possibility of danger by so complete and merciless a thralldom, as would make any effort of resistance physically impossible. Perhaps, my Lords and gentlemen, I may be thought the apologist, instead of the reviler of the ruler of France: I affect not either character: I am searching for the motives of his conduct, and not for the topics of his justification. I do not affect to trace those motives to any depravity of heart, or of mind, which accident may have occasioned for the season, and which reflection or compunction may extinguish or allay and thereby make him a completely different man with respect to France and the World. I am acting more fairly and more usefully to my country, when I shew, that his conduct must be swayed by the permanent pressure of his situation, by the tyrannical control of unchangeable and inexorable neces-

sity;

sity; that he cannot dare to relax or relent, without becoming the certain victim of his own humanity or contrition. I may be asked, are these my own speculations? or have others in *Ireland* adopted them? I answer freely, no! non meus hic sermo est.

It is, to my own knowledge, the result of serious reflection, in numbers of our fellow-subjects. In the storm of arbitrary sway—in the distraction of virtue, and suffering, the human mind had lost its poise, and its tone, and was incapable of sober reflection, but by removing those terrors from it, by holding an even hand between all parties, by disdaining the patronage of any sect, or faction, the people of *Ireland* were left at liberty to consider her real situation, and interest, and happily for herself, I trust in God, she has availed herself of the opportunity. With respect to the higher orders even of those who thought they had some cause to complain, I know this to be the fact, they are not so blind as not to see the difference between being proud and jealous and punctilious in any claim of privilege or right between themselves and their fellow subjects and the mad and desperate depravity of seeking the redress of any dissatisfaction they may feel by an appeal to force, or the odious recourse to treason, and to blood.

As to the lowest orders of our people, for whom I confess I feel the greatest sympathy, because there are more of them to be undone, and because from want of education they must be more liable to delusion, I am satisfied the topics I have adverted apply with still greater force to them, than to those who are raised above them, I have not the same opportunity of knowing their actual opinions. But if their opinions are other than I think they ought to be, would to God! they were present in this place, or that I had the opportunity of going into their cottages, and they well know I would not disdain to visit them, and to speak to them on the subject, I should have little difficulty in shewing their quick and apprehensive minds, how easy it is, when the heart is incensed, to confound the evils which are inseparable from the destiny of imperfect man, with those which arise from the faults or errors of his political situation, I would put a few questions to their candid and unadulterated sense; I would ask them, do you think you have made

no advance to civil prosperity within the last twenty years? are, your opinions of modern and subjugated *France* the same that you entertained of popular and revolutionary *France*, fourteen years ago? have you any hope that if the First Consul got possession of your Island, he would treat you half so well, as he does those countries at his door, whom he must respect more than he can respect or regard you? and do you know how he treats those unhappy nations? You know that in *Ireland* there is little personal wealth to plunder; that there are few churches to rob. Can you then doubt, that he would reward his rapacious generals and soldiers, by parcelling out the soil of the Island among them, and by dividing you into lots of serfs to till the respective lands to which you belonged, or sending you, as graziers to enjoy the rocks of *Malta* and *Gibraltar*. Can you suppose, that the perfidy and treason of surrendering your country to an invader, would to your new master be any pledge of your new allegiance. Can you suppose that while a single French soldier was willing to accept an acre, that he would leave that acre in the possession of a man who had shewn himself so wickedly and stupidly dead to the suggestion of the most obvious interest and to the ties of the most imperious moral obligations, what do you look forward to with respect to the aggrandizement of your sect? Are you protestants? he has abolished protestantism with christianity. Are you catholics? do you think he will raise you to the level of the Pope? perhaps, and I think he would not:—but if he did, could you hope more privilege than he has left his Holiness, and what privilege has he left him? he has reduced his religion to be a mendicant for contemptuous toleration, and he has reduced his person to beggary and to rags. Let me ask you a further question? do you think, he would feel any kind hearted sympathy for you? answer yourselves by asking what sympathy does he feel for *Frenchmen*, whom he is ready by thousands to bury in the ocean in the barbarous gambling of his wild ambition? what sympathy then could bind him to you? he is not your countryman, the scene of your birth and your childhood is not endeared to his heart, by the reflection that it was also the same of his. He is not your fellow christian:—he is therefore not

bound to you by any similarity of duty in this world, or by any union of hope beyond the grave. What then could you suppose the object of his visit, or the consequence of his success? Can you be so foolish, as not to see that he would use you as slaves while he held you; and that when he grew weary, which he soon would become of such a worthless and precarious possession, he would carry you to market in some treaty of peace; barter you for some more valuable concession, and surrender you to expiate by your punishment, and degradation, the advantage you had given him by your follies and your crimes.

There is another topic on which a few words might be addressed to the deluded peasant of this country. It might be asked, what could you hope from the momentary success of any effort to subvert the government by mere intestine convulsion? Could you look forward to the hope of liberty or property? You see the characters, the capacities, and the motives of those that have embarked in those desperate projects. You see them a despicable gang of needy adventurers, desperate from guilt and poverty, uncountenanced by a single individual of probity or name, ready to use you as the instruments, and equally ready to abandon you by treachery or flight as the victims of their crimes. For a short interval murder and rapine might have their sway, but don't be such a fool as to think, that though robbery might make a few persons poor, it could make many persons rich—don't be so silly as to confound the destruction of property with the partition of wealth. Small must be your share of the spoil, and short must be your enjoyment of it. Soon, trust me very soon, would such a state of things be terminated by the very atrocities of its authors, soon would you find yourself subdued, disgraced, degraded. If you looked back, it would be to character destroyed—to hope extinguished. If you looked forward, you could see only the dire necessity you had imposed upon your governors, of acting towards you with no feelings but those of abhorrence and of self-preservation—of ruling you by a system of coercion, of which alone you would be worthy, and of loading you with taxes;—that is selling the food and raiment which your honest labour

labour might earn for your family, to defray the expence of that force by which only you could be restrained.

Say not, Gentlemen, that I am inexcusably vain, when I say, would to God that I had the opportunity of speaking this plain, and I trust, not absurd language, to the humblest orders of my countrymen. When I see what sort of missionaries can preach the doctrines of villainy and folly with any success. I cannot think it very vain to suppose, that they would listen with some attention and some respect to a man, who was addressing plain sense to their minds—whose whole life ought to be a pledge for his security and affection—who had never in a single instance deceived, or deserted, or betrayed them—who had never been seduced to an abandonment of their just rights, or a connivance at any of their excesses, that could threaten any injury to their character or their condition.

But, perhaps, I have trespassed too much upon your patience, by what may appear a digression from the question: the motive of my doing so, I perceive, by your indulgent hearing, you perfectly comprehend; but I do not consider what I have said, as a mere irrelevant digression. With respect to the immediate cause before you, the reasoning comes to this;—The present state of this country shews, that nothing could be so stupidly and perversely wicked, as a project of separation, or of French connexion, and of course nothing more improbable, than the adoption of such a senseless project. If it be then so senseless, and therefore so improbable, how strong ought that evidence be, on which you would be warranted in attesting on your oaths to *England* and to *France*, so odious an imputation over the good sense and loyalty of your country? Let me revert again to the evidence which you have heard to support so incredible a charge. I have already observed on the contemptible smallness of the number: a few drunken peasants assemble in the outlets—there, in the fury of intoxication, they commit such odious atrocities, as no man can be disposed to defend or extenuate; and having done so, they fly before a few peace officers, aided by the gallantry of Mr. Justice *Drury*, who even if he did retreat, as has been insinuated, has at least the merit of having no wish to shed the blood of his fellow-Christians; and certainly

is entitled to the praise of preserving the life of a most valuable citizen and loyal subject ! In this whole transaction, no attempt, however feeble or ill-directed, is made on any place belonging to, or connected with the government;—they never even approach the barrack, the castle, the magazines;—no leader whatever appears;—nothing, that I can see to call for your verdict, except the finding the bill, and the uncorroborated statement of the ATTORNEY-GENERAL. In that statement too, I must beg leave to guard you against mistakes in one or two particulars. As to what he said of my Lord KILWARDEN, it was not unnatural to feel, as he seemed to do, at the recollection, nor to have stated that sad event as a fact that took place on that occasion; but I am satisfied he did not state it with the least intention of agitating your passions, or of letting it have the smallest influence on your judgment. In your inquiry into a charge of treason, you are to determine upon evidence, and what is there in this case to connect the Prisoner with the general plan or the depot which was found? I do not say that the account of these matters was not admissible evidence, but I say, that the existence of these things without a design, or proof of a design, without connection with the Prisoner, cannot affect his life, for you cannot found a verdict upon construction or suspicion.

The testimony of *Adams* seemed to have been brought forward as evidence of greater cogency.—He saw the Prisoner go out with a bag half full, and return with it empty. I am at a loss to conjecture what they would wish you to suppose was contained in it—but men are seen at his house; does it follow that he was connected with the transactions in *Thomas-street*? The elder *Adams* does not appear to have stated any thing material but his own fears. The Proclamation may be evidence of a treasonable conspiracy existing; but it is no evidence against the Prisoner, unless he be clearly connected with it, and in truth, when I see the evidence on which you are to decide, reduced to what is legal or admissible, I do not wonder that Mr. ATTORNEY GENERAL himself, should upon the first trial, have treated this doughty rebellion with the laughter and contempt it deserved. Where now is this providential escape of the government

ment and the castle? why simply in this, that no one attacked the one or the other! and that there were no persons that could have attacked either. It seems not unlike the escape which a young man had of being shot through the head at the battle of *Dettingen*; by the providential interference by which he was sent twenty miles off on a foraging party, only ten days before the battle. I wish from my heart that there may be now present some worthy gentleman who may transmit to *Paris* a faithful account of what has this day passed. If so, I think some loyal absentee may possibly find an account of it in the *Publiciste* or the *Moniteur*, and somewhat in this way:—"On the 23d July last, a most splendid rebellion displayed her standard in the metropolis of *Ireland*, in a part of the city, which, in their language is called the *Poddle*—the bands of heroes that came forth at the call of patriotism, capable of bearing arms, at the lowest calculation must have amounted to little less than *two hundred persons*! The rebellion advanced with most intrepid steps, till she came to the site of the old four courts and tholsel; there she espied a decayed pillory, on which she mounted in order to reconnoitre; but she found to her great mortification, that the rebels had staid behind, she therefore judged it right to make her escape, which she effected in a masterly manner down *Dirty-lane*; the rebels at the same time retiring in some disorder from the *poddle*, being hard pressed by the poles and lanterns of the watchmen, and being additionally galled by *Mr. Justice Drury*, who came to a most unerring aim upon their rear, on which he played without any intermission with a spy glass from his drawing-room window! It is clearly ascertained she did not appear in her own clothes, for she threw away her regimental jacket before she fled, which has been picked up, and is now to be seen at *Mr. Carleton's* (a Frenchman I suppose), at sixpence a head for grown persons, and three pence for a nurse and child. It was thought at first to be the work of an Irish artist, who might have taken measure in the absence of the wearer, but by a bill and receipt found in one of the pockets, it appears to have been made by the actual body tailor of her august highness the

"confort

“confort of the consul; at present it is but poorly ornamented, and it is said the Irish Volunteers have entered into a subscription to *trim* it, if it shall be ever worn again.”

Happy! most happy is it for these islands, that those rumours which are so maliciously invented and circulated to destroy our confidence in each other, to invite attack and dispirit resistance, turn out on enquiry to be so ludicrous and contemptible, that we cannot speak of them without laughter, or without wonder that they did not rather form the materials of a farce in a puppet-show, than of a grave prosecution in a court of justice.

There is still, Gentlemen of the Jury, another topic material for you to be reminded of:—This is the first trial for high treason that occurred since the union of these islands; no effectual union can be achieved by the mere letter of a statute. You may therefore declare yourselves incapable of legislation, but no mere contract can of itself work an effectual incorporation of the countries. Do not imagine, that bigotry can blend with liberality, or barbarism with civilization. If you wish really to be united with Great Britain, teach her to respect you, and to do so by shewing her that you are fit objects of wholesome laws—by shewing her that you are as capable of rising to a proud equality with her in the exercise of social duties and civil virtues, as every part of the globe has proved you to be in her fleets and her armies—shew her that you can try this cause as she would try it—that you have too much sense and humanity to be borne away in your verdict by a despicable panic or brutal fury—shew her that in prosecutions by the state, you can even go a step beyond her, and that you can discover and act upon those eternal principles of justice, which it has been found necessary in that country to enforce by the coercion of law. You cannot but feel, I allude to the statute which requires two witnesses in treason, our statute does not contain that provision; but if it were wise to enact it there as a law, it cannot be other than wise to adopt it here as a principle, unless you think it discreet to hold it out as your opinion, that the life of a man is not as valuable here, and ought not to be as secure as in other parts of the empire; unless you wish to prove your capability of equal rights and equal liberty

liberty with Britain, by consigning to the scaffold your miserable fellow-subject, who, if tried in *England* on the same charge and the same evidence, would by law be entitled to a verdict of acquittal. I trust you will not be satisfied even with a cold imitation of her justice, but on this occasion you will give her an example of magnanimity, by raising superior to the passion or the panic of the moment.

If in any ordinary case, in any ordinary time, you have any reasonable doubt of guilt, you are bound by every principle of law and justice to acquit; but I would advise you at a time like this, rather to be lavish than parsimonious in the application of that principle; even though you had the strongest suspicion of his culpability I would advise you to acquit: you would shew your confidence in your own strength; that you felt your situation too high, to be affected in the smallest degree by the fate of so insignificant an individual, even the miserable Prisoner himself, tainted and blemished as he possibly may be, even him you may retrieve to his country and his duty, by a salutary effort of reasonable magnanimity. You will inspire him with reverence for that institution, which knows when to spare as well as when to inflict; and which instead of sacrificing him to a strong suspicion of his criminality, is determined, not by the belief, but by the possibility of his innocence, and dismisses him with an indignant and contemptuous mercy.

Richard Wallace.

Examined by Mr. MAONALLY.

Q. Where do you live?

A. In *Plunket-street*.

Q. What number?

A. Number 64.

Q. Did you live there on the 23d of July last?

A. I did.

Q. Do you know the Prisoner?

A. I do.

Q. Does he live in the saddle-house with you?

A. He does—I own the house.

Q. Then, he is your tenant?

A. He is.

Q. Do

Q. Do you know where the prisoner was that evening?

A. I do not—but he was at home at ten that night at his own door.

Q. Do you know the younger *Adam*?

A. I do.

Q. He is a married man?

A. He is.

Q. Do you know of any dispute between him and the Prisoner?

A. I do not.

Q. Did you see the Prisoner at an earlier hour that evening?

A. I did not.

Q. What time did he return from his stall?

A. His stall!—he is a cast-clothes man.

Q. What time does he generally come home in the evening?

A. About four or five, according as he makes a bargain.

Q. What time did you return from your work that evening?

A. About nine o'clock.

Q. Were you out that evening?

A. No, I went up stairs to bed, and did not rise till eight the next morning.

Cross-examined by Mr. PLUNKET.

Q. You say the Prisoner's trade is a cast-clothes man?

A. Yes.

Q. His usual habit was to return home about four or five in the evening?

A. It was according as he got bargains, he was a very honest poor man for the year and a half he was with me.

Q. Did you hear of any thing particular doing that evening?

A. Not any thing—only a parcel of men whom I thought watchmen and I did not mind them.

Q. They passed towards Patrick-street?

A. They did.

Q. How many were there?

A. Seven or eight.

Q. Was

Q. Was that before you saw the Prisoner?

A. It was about half an hour.

Q. You did not see any more?

A. No.

Q. You never saw a pike?

A. Not till that night.

Q. You heard of some little disturbance that night?

A. I did.

Q. Was you at work that night?

A. I was.

Q. Do you now think they were watchmen you saw?

A. No.

Q. What do you think they were?

A. It seems they were rebels.

Q. And this was before the Prisoner came home?

A. It was.

Q. Did you see the Prisoner again that night?

A. I did not.

Q. When did you see him next?

A. I heard he went to a child at nurse—

Q. When did you see him?

A. In about a fortnight—

Q. He brought back the child?

A. I cannot say; I did not see it.

Q. Where was it at nurse?

A. I cannot tell.

Q. You counted him an honest man, could he afford to stay a fortnight at the place of his child's nurse?

A. I cannot say.

Q. When did you hear of the work in *Thomas-street*?

A. Next morning about eight.

Q. Was the prisoner at home then?

A. I cannot tell.

Margaret Lappin.

Examined by Mr. CURRAN.

Q. Where do you live?

A. In *Thomas-street*.

Q. Do you live in the house with the prisoner?

A. Sometimes.

Q. Did you lie there on the night of the 13d of July last?

A. I did.

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Q. Were

Q. Were you there all day?

A. I was.

Q. Did you see the prisoner on that day?

A. I did, the whole day.

Q. What was the latest hour you saw him?

A. Between nine and ten, when he went to bed.

Q. Where did you sleep?

A. I did not sleep much that night.

Q. Why not?

A. I heard the noise and could not sleep much.

Q. Was the prisoner in bed that night?

A. He was.

Q. By virtue of your oath?

A. He was.

Q. Did he go to the country after that?

A. He did, to see a child who was very bad.

Q. When did he go?

A. About a week after, and the child is not well yet.

Q. Where was he taken?

A. At his own place—I was by.

Cross examined by Mr. MAYNE.

Q. Pray Madam —

A. You need not ask me any more.

Q. Why so?

A. Because I know no more.

Q. Would you rather go away?

A. You may do what you please with me—I lived three years with the prisoner and nursed some of his children.

Q. You saw him on the next day?

A. I did.

Q. Where?

A. In his own house.

Q. And every day after?

A. Yes.

Q. Was he public all that time?

A. He was.

Q. Did you see him with *Wallace* that week?

A. I had no call to *Wallace*.

Q. He lived in the house?

A. He did.

Q. Could he be there without seeing the prisoner?

A. I cannot say.

Q. Were

Q. Were you in bed that night?

A. No—I was up and down.

Q. Where did you sleep?

A. In the parlour or shop.

Q. Where did the prisoner sleep?

A. In the same place.

Q. How long did he stay when he went to the country?

A. About a week.

Q. He was taken the next day after he came home?

A. No, not till *Wednesday*—he came home on *Saturday*.

Q. Did you see nine or ten men about his house that night?

A. I saw no mankind there that night.

Q. You saw no arms or pikes that night?

A. No such thing.

Hugh Kelly.

Examined by Mr. MAC NALLY.

Q. Where do you live?

A. At No. 51, *Plunket-street*.

Q. How long have you known the prisoner?

A. I cannot have known him less than 15 years.

Q. Were you acquainted with him?

A. As a neighbour in the place.

Q. What has been his general character as to loyalty or disloyalty?

A. I know nothing of his loyalty or disloyalty—or politics—or any thing of that kind.—He was an honest industrious man, working for his family.

Laurence Watson.

Examined by Mr. CURRAN.

Q. Where do you live?

A. In *Plunket-street*—I keep a broker's shop.

Q. Do you know the prisoner?

A. Since he was a child.

Q. Do you know his general character?

A. I always knew him to be an honest, industrious man.

Q. Have you ever known his character impeached for disloyalty?

A. I know nothing about that.

Q. Did you ever hear that it was impeached for disloyalty?

A. Never.

Q. If it had been so impeached would it not come to your knowledge?

A. Perhaps it might—I know nothing of it.

John Hickey.

Examined by Mr. CURRAN.

Q. Where do you live?

A. In *Plunket-street*, in the brokery line.

Q. How long do you know the prisoner?

A. Fourteen years.

Q. What is his general character?

A. An honest man.

Q. What has been his character as to loyalty?

A. I cannot say;—I know nothing about him, but that he was a hard-working man.

Q. Do you mean to say he was a disloyal man?

A. I do not—I know nothing of it.

Here the evidence closed, and the Counsel for the Prisoner and the Crown respectively waved their right of observing upon the evidence.

Mr. BARON GEORGE.

Gentlemen of the Jury,

The Prisoner at the bar is indicted of High Treason, in conspiring the death of the King and Levying War; and there are several over acts laid in the indictment. I shall point your attention to those to which in my apprehension, the Evidence is most applicable. Because it is necessary in order to maintain indictments of this kind, that you should be satisfied, that one or more of the over acts stated have been proved.

Gentlemen, the Prisoner is accused of being one of a conspiracy formed to levy war against the government of the country, and of being one of a multitude of persons armed and arrayed for the purpose of levying war, and that he did actually levy war to overthrow the government of the country; and as I detail the evidence, you will see how far these facts have been proved.

The first witness examined was *Edward Wilson*,—(Here the learned Judge minutely recapitulated the evidence from his notes and then proceeded.)

Now,

Now, Gentlemen, the first question for you upon this occasion to form an opinion upon, is, whether there was in fact a rebellion, or not?—or whether it was a rising or a riot of an inferior nature?—As to the question, whether there was a rebellion or not, you are to take into consideration all the circumstances of the case. You observe, that the first circumstance appearing is, knots of persons of various descriptions, some of them countrymen, others townsmen, about the hour of nine o'clock, apparently armed, speaking and consulting together.—All these making off, as if with one common mind and running down *Marshal-lane* towards one end of *Mass-lane*.—The next thing that appears is, this crowd coming out of the other end of the lane, opening into *Dirty-lane*, carrying pikes upon their shoulders; moving slowly on, as if waiting for those who were arming themselves at the Depot, which was afterwards discovered to be in that lane. You are then to consider the evidence which has been given, respecting the contents of that Depot, and it is for you to judge from the quantity of weapons there collected, and the nature of them, whether it is likely, that they were to be used in riot, or whether they were not for some greater and higher object to be accomplished by those who collected them. There was not only a quantity of pikes thrown out to supply the number of men who were to be armed upon that occasion, but 6 or 7,000, are left behind—there are ball cartridge, hand-grenades, bottle shot, uniforms, colours, and rockets, and besides all these, large bundles of *proclamations*, wet, as if fresh from the press;—You have heard some part of the contents read, and you observe how it is entitled, “The Provisional Government to the People of Ireland.” This proclamation does in express terms declare the purpose for which those weapons were provided. The proclamations were to be distributed among the people, after the weapons, there collected, should have achieved the object for which they were collected, and these proclamations seem to point out the first arrangement intended to be made, upon the overthrow of the government.

Then, Gentlemen, you see further that the multitude, then assembled, made the king's troops and forces the chief objects of their attack.—It is not essentially necessary

necessary, that it should appear, that the force collected and formed was adequate to the design of the overthrow of the government.—But you are to consider, what the design was—was it revolution, or any object of less magnitude?—Therefore if you cannot attribute all this preparation and conduct of the persons engaged, so far as appears to you, to any other design than revolution, you will consider whether the assertion in the indictment that war was levied against the government of the country, is true or not?—The fact does not in the defence that has been made for the Prisoner seem to be controverted. But still you are to exercise your judgment whether all those materials, thus stored up secretly were collected and provided by insurgents and part of them used by them for a public design against the laws and constitution of the country? And if you do believe, they were collected and after used for the purposes of such a conspiracy, and by preconcert, then the material point for you to consider will be, whether this was known to the Prisoner, or whether he took any part to carry it into execution.

The evidence to shew, that the Prisoner had intimation of the design, rests upon the testimony of *Adams*, if you believe it, for every thing affecting the Prisoner rests upon the credit you give the witness. From his testimony it appears, that upon the rocket going off, the Prisoner made the exclamation, you have heard—then had his coat changed, took up a pike, and marched at the head of seven or eight men, making the declaration, which was stated, “that all who did not join should be put to death the next day”—You will naturally ask, how could all this happen, unless he previously knew of the matter, was acquainted with the rocket and the signal it was to convey.

Gentlemen, if you believe this, it is strong evidence to shew that he knew of the design, and if he took up a weapon of that kind which all the other rebels had, and went in that direction where the other rebels were collected, you are to determine whether he did not move forward for the same purpose, and if you do believe it, that movement will be proof of the conspiracy and levying war, of which the prisoner is indicted.

As to the testimony, by which the Prisoner is charged, it

it unquestionably requires the most serious consideration. You will observe, Gentlemen, that the evidence is given by an opposite neighbour, who was acquainted with the person of the Prisoner for ten or twelve years, who was looking at him for a considerable time that evening and was watching his motions. This witness has given a most particular account of all the Prisoner's movements that evening, as well specifying the acts which might be indifferent, as those tending to shew his knowledge of and participating in the treasonable design. Therefore it will follow that this witness cannot be supposed to be mistaken as to the person of the Prisoner. But in truth this is for your consideration, if this man has been deceiving us and telling us what is not true, we must consider him to be a monster of great enormity. It is not mere perjury to swear false upon this occasion—to convict an innocent man, who has a wife and children and to deprive him of life by false testimony would be a most aggravated murder. You will consider, Gentlemen, what motive this young man can have to destroy his neighbour in that manner. You observed the cross examination of the witness, and the manner in which he gave his evidence. If you believe also the fact, that the Prisoner went off the next morning, it will be strong evidence to corroborate the testimony of the witness.

As to the Prisoner going off, there is a contrariety of evidence, which is exclusively your province to decide upon.

You will also take into consideration the testimony of *Margaret Lappin*, stating, that the Prisoner was at home the entire of the day and went to bed at ten o'clock, and did not go out. If you believe her evidence it is impossible that the Prisoner could be guilty of the facts stated by the witness for the prosecution.

Therefore, Gentlemen, upon the whole of the case, you are to determine, whether the testimony of *Adams* is believed or not;—because if it is believed, it is our duty to tell you, that it proves the over acts in the indictment.

But if you have such doubts as reasonable men may entertain in such a case, it is your duty to acquit the Prisoner.

The Jury retired, and after deliberating for five minutes, returned a Verdict, *Guilty*.

The

The Prisoner was remanded.

On *Friday*, the 2d of *Sept.* he was brought up for judgment. The indictment was read, and he was asked, what he had to say, why judgment of death and execution should not be awarded against him :

Prisoner. I have nothing to say, but that I was prosecuted wrongfully, "I beg the mercy of the court; and to have the benefit of Clergy."

Mr. MAC NALLY intimated, that the Prisoner's desire was to have a clergyman of his own persuasion to visit him.

Mr. ATTORNEY GENERAL said he was not aware that any difficulty occurred in that respect, but he would give a general order that a proper person should be admitted.

Mr. *Baron* GEORGE after making some observations applicable to the evidence, and the propriety with which the prosecution had been conducted, spoke of the enormity and insanity in which the treason was conceived—was conducted and executed—his address to the convict was designed to awaken in his mind a becoming sense of his own situation, and of the cruel injury which he and his accomplices had done to the community;—and having exhorted him without the loss of a moment to make every reparation and atonement in his power to his King and Country—he pressed him as he valued his salvation not to quit this world without making the most full disclosure of such part of this mischief as might still remain undetected—and having reasoned that whilst that duty remained undone he cannot hope that his prayers would be heard or his devotion acceptable; he pronounced on him the usual sentence.

The Prisoner was executed the following day in Thomas-street.

Counsel for the Crown.
Same as in the former
Trials.

Crown Solicitors.
T. and W. Kemmis.

Counsel for the Prisoner

Mr. CURRAN.

Mr. MAC NALLY.

Agent.

Mr. L. MAC NALLY.

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PROCEEDINGS

IN

Cases of High Treason.

SPECIAL COMMISSION.

Friday, September 2d, 1803.

This Day the Court sat pursuant to Adjournment.

Judges present:—Lord NORBURY, Mr. Justice FINUCANE, Mr. Baron GEORGE, and Mr. Baron DALY.

James Byrne, who had been arraigned upon the following Indictment, on *Wednesday* the 31st of August, was put to the bar for trial.

County of the City of } THE Jurors of our Lord the
Dublin, to wit, } King upon their oath present, that
James Byrne, late of *Thomas-street*, in the city and county
of the city of *Dublin*, yeoman, a subject of our said Lord
the now King, not having the fear of God in his heart,

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nor

nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the Devil, as a false traitor against our said Lord the now King, his supreme, true, lawful and undoubted Lord, the cordial love and true and due obedience which every true and dutiful subject of our said Sovereign Lord the King, towards him our said Lord the King, should bear, wholly withdrawing, and contriving and intending the peace and common tranquillity of this kingdom to disquiet, molest and disturb, and the Government and Constitution of this realm to change, subvert and alter, and our said Lord the King from the Royal state, title, honor, power, Imperial Crown and Government of this Kingdom, to depose and deprive, and our said Lord the present King to death and final destruction to bring and to put, he the said *James Byrne* on the 23d day of *July*, in the 43d year of the reign of our said Lord the King at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, wickedly, and traitorously did compass, imagine, and intend our said Lord the King, then and there, his supreme, true, and lawful Lord, of and from the Royal state, crown, title, power and government of this realm, to depose and wholly deprive, and our said Lord the King to kill, and bring and put to death.

And that to fulfil, perfect, and bring to effect his most evil and wicked treason and treasonable imaginations, and compassing aforesaid, he the said *James Byrne*, as such false traitor as aforesaid, on the said 23d day of *July*, in the 43d year of the Reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, maliciously, and traitorously did conspire, confederate, and agree to and with divers other false traitors, whose names are to the Jurors aforesaid unknown, to raise, levy, and make a public and cruel insurrection, rebellion and war against our said sovereign Lord the King, within this Realm.

And that afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *James Byrne*, as such false traitor as aforesaid,

aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, did arm himself with, and did carry a certain weapon called a pike, with intent to associate himself with divers other false traitors, armed with guns, swords and pikes, whose names are to the said Jurors unknown, for the purpose of raising, levying, and making insurrection, rebellion and war against our said Lord the King, and of committing and perpetrating a cruel slaughter of, and amongst the faithful subjects of our said Lord the King within this kingdom.

And that afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *James Byrne*, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords and pikes, being then and there unlawfully and traitorously assembled and gathered against our said Lord the King, did prepare, levy, ordain, and make public war against our said Lord the King, against the duty of the allegiance of him the said *James Byrne*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

And the said Jurors of our said Lord the King, upon their oath, do further present, that the said *James Byrne*, being a subject of our said Lord the now King, and not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the Devil, and entirely withdrawing the love and true and due obedience, which every subject of our said Lord the King should, and of right ought, to bear towards our said sovereign Lord the King, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, on the 23d day of *July*, in the 43d year of the reign of our said Lord the King, with force and arms at *Thomas-street*, in the city and county of the city of *Dublin* aforesaid, unlawfully, maliciously and traitorously, did compass, imagine, and intend to raise, and

levy war, insurrection and rebellion against our said Lord the King within this kingdom, and in order to fulfil and bring to effect the said traitorous compassing, imaginations, and intentions last mentioned, of him the said *James Byrne*, he the said *James Byrne* afterwards, to wit on the said 23d day of *July*, in the said 43d year of the reign of our said Lord the King, with force and arms at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with a great multitude of persons, whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with swords, guns, and pikes, being then and there unlawfully, maliciously, and traitorously assembled, and gathered together against our said Lord the now King, most wickedly, maliciously and traitorously, did ordain, prepare, levy, and make public war against our said Lord the King, his supreme and undoubted Lord, contrary to the duty of the allegiance of the said *James Byrne*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded, *Not Guilty*—and being asked, was he ready for his trial, said he was; whereupon he was put to his challenges, and the following jury was sworn, after three being set by on the part of the Crown, and five peremptory challenges by the Prisoner.

John Tudor,
Benj. Hallam,
George Thorpe,
John Keene,
John Campbell,
Andrew Richey,

John Charrurier,
Bennet Dugdale,
Charles Cox,
Hugh Craig,
Wm. Trocke,
John Salmon.

After the Jury was sworn, Mr. MAC NALLY moved, that Mr. CHARLES BALL might be assigned counsel for the Prisoner, he having named only one counsel when formerly brought up for that purpose.

This motion was immediately granted as a matter of course.

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The Prisoner was then given in charge to the Jury.

Mr. O'GRADY opened the indictment.

MR. ATTORNEY GENERAL.

My Lord, and Gentlemen of the Jury,

The Indictment has been read, which charges the Prisoner at the bar with the atrocious crime of High Treason.—It will be your duty, Gentlemen, with the utmost attention to collect, from the evidence which will be submitted to you, whether in truth he is guilty of that crime or not.

It will be necessary for the Counsel on the part of the Crown, first to bring forward evidence to shew that there existed in the city of *Dublin*, on the 23d of *July* last, a rebellious and traitorous insurrection—a conspiracy to alter the form of our Government by force—an attempt which, if successful, must lead to the destruction of many of the King's subjects, and ultimately of the King himself.

Having established that fact, the next object will be to shew how far the Prisoner at the bar participated in that rebellion.—A man may be guilty of Treason, either by planning or originating a rebellion in conspiracy with others, or afterwards by aiding and abetting the conspiracy, though not originally privy to the motives and designs of it.

Gentlemen, it will appear that in the course of that night, Lieut. Brady, at the head of a party of the 21st regiment, marched into *Thomas-street*—that the Rebels gave him battle, and one or two of his men were wounded.—Having defended themselves with great gallantry, and routed their assailants, they apprehended three persons,—1st *Kearney*, next *Roche*, and 3dly the Prisoner at the bar.—I mention these circumstances rather to caution you not to allow, in the remotest degree, the crime of the prisoners, who have been convicted to be implicated with the case of the Prisoner now upon trial—they may have been guilty, as they are found to have been; and yet it is possible that the prisoner now before you may be altogether innocent.

According

According to the information which I have, it is stated, that this man appeared a little on one side of the party of Rebels in *Thomas-street*, who were met by Lieutenant *Brady*—he came suddenly upon the Prisoner, who had a pike in his hand; upon perceiving the persons who came near him, he threw off his pike and endeavoured to run, but was immediately seized. After a soldier had taken him he struggled to escape, so that it was necessary for a second soldier to assist in securing him.

Gentlemen, the Prisoner as I understand, is not a native of *Dublin*, he is a baker in the town of *Naas*. I cannot conjecture what brought him to *Dublin* that evening, unless for the treasonable purpose with which we charge him. It is for him to shew, that he was occupied in that hour upon lawful business, notwithstanding the agitation which then prevailed in the street.

In point of law, you will have the direction of the Court—the mere holding of a pike is not treason, no more than a pen or a stick—it is the intention with which it is taken up, that constitutes the crime; certainly the nature of the instrument itself, and the time and manner of holding it, are circumstances which you will take into your consideration in collecting that intention. If you shall be of opinion, that the Prisoner wilfully took it up to aid, or to countenance by his presence, those, who were engaged in the traitorous design, you will be bound to find him guilty; but if on the other hand, he can make it appear to you that he held it innocently, you will acquit him.

I have observed to each Jury, impanelled upon these trials, not to attend to any thing but the evidence which shall be given in Court. We desire nothing, but that a fair judgment should be formed upon the evidence which shall be given, by which both the Crown and the Prisoner must abide.

EDWARD WILSON, Esq. examined.

Gave substantially the same evidence as upon the former trial. *Vide page 37, No. I. Kearney's case.*

WHEELER

WHEELER COULTMAN, Esq.

Also gave same detail of his discovery of the depot, &c. as upon the former trials. *Vide page 48, No. I. and page 8, No. II.*

Serjeant THOMAS RICE,

Proved the Proclamation as in the first case. *Vide page 54, No. I.*

FELIX BRADY, Esq.

Examined by the SOLICITOR GENERAL.

Q. You are a Lieutenant of the 21st Regiment?

A. Yes.

Q. Where were you stationed upon the 23d of July last?

A. At *Cork-street* barracks.

Q. Did you at any time of the night see any number of people, and mention what happened?

A. I went out with a party, between 40 and 50 men, for the purpose of going to *Usher's-island*, to report to Col. Browne the information, I had received, of an armed mob being in the city—that our drum had beat to arms, and to know, whether he would give me any orders, or would come himself to the barrack. On entering the narrow part of *Thomas-street*, leading out of *James's-street*, I met a man with a pike in his hand, very near the corner of the street facing *James's-street*. On seeing him, I asked him what he was going to do with the long pole which he had in his hand, to which he made no reply; I got a corporal to my assistance to take the pike out of his hand, I had supposed it was a pole—he struggled a good deal before he let it go. I then got assistance to put him between the sections—he struggled much and made a great noise, and immediately a bottle was thrown from a window on the left, which fell into the centre of the men, and a shot was fired from the right, which wounded one of my soldiers, he was wounded in the belly through the liver, he is since dead. I then ordered my men to form sub-divisions, and prime and load. I heard an huzza in front and a great noise of men coming forward—I heard

heard their feet, but could not see them. When they advanced near me, the leading sub-division fired a volley; then the men kept up an independent fire, and from their light I observed near me on the left, some men with pikes;—they fled in all directions when the firing was kept up about two minutes, leaving six killed and one dying close by me. There was a second prisoner brought to me, and one of my men said to me, “Here is the “pike which he had,”—that was *Kearney*;—there were two other prisoners brought, but I cannot recollect them.

I saw the Prisoner at the bar at the guard-house in *James's-street*,—he was brought there by the men with me, and lodged in the guard-house.

Q. What time passed between your firing and your setting off for the guard-house?

A. Not more than ten minutes, on account of my wounded man taking me by the coat and asking leave to go to the barrack—I told him it was dangerous, but that I would face about and leave him in *James's-street* barrack.

Q. How soon were the two prisoners brought after the firing?

A. Almost immediately.

Q. It was one transaction?

A. It was—I advanced a little and saw the dead men I just mentioned and many pikes, which were brought with us.

Cross-examined by Mr. MAC NALLY.

Q. You mentioned that the night was very dark?

A. It was.

Q. Had you or your party any kind of light?

A. None, but the flashing of the pans.

Q. Upon the discharge of the pieces by your men, there must have been a smoke between the rebels and the soldiers?

A. That of course, if the wind blew it against the soldiers?

Q. But it was a calm night?

A. It was.

Q. Then the smoke would form a screen between the two parties?

A. I think it would go up.

Q. But

Q. But for some time, would not the smoke create a darkness between your men and the opposite party?

A. It is reasonable that it would.

Q. *By the Court.* Could you see the men with pikes, notwithstanding the smoke?

A. I could, and did see them with pikes like white poles—the men I saw were upon my left, not in front, so I saw them distinctly.

WHEELER COULTMAN, Esq. *again examined,*

Q. What colour were the pikes which you found in the depôt?

A. They were white, made of deal and very light.

Robert Wyatt,

Examined by Mr. TOWNSEND.

Q. Look about and try if you know the Prisoner at the bar?

A. I do.

Q. You belong to the 21st regiment?

A. I am a private in that regiment.

Q. When did you first see the Prisoner?

A. I saw him in Thomas-street.

Q. Upon what day?

A. On the night of the 23d of July.

Q. Were you there upon duty?

A. Yes.

Q. Under whose command?

A. Under Lieutenant Brady.

Q. You were one of his party?

A. Yes.

Q. In what situation were you?

A. I was in the 2d division, the left hand man, close by the pavement when the firing began.

Q. Where did you see the Prisoner?

A. I saw the Prisoner on the pavement with a pike on his shoulder about two yards from me.

Q. Do you know the distinction between the pavement and what we call the flags?

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A. I call

A. I call them both pavement—one is called broad pavement.

Q. That is the flagged part?

A. Yes.

Q. Was it there you saw the Prisoner?

A. Yes.

Q. What did you do?

A. I cried out to him, to stop—when I said that, he threw his pike from him and I seized him.

Q. Why did you desire him to stop?

A. He was endeavouring to pass us.

Q. Did he stop when you bid him?

A. He then threw his pike from him and I caught him by the breast and brought him among the men.

Q. Did he submit?

A. No; he struggled to get off, and I was obliged to get another soldier to my assistance.

Q. He is a strong man?

A. He is, and I had my musquet in one hand, and I held him with the other.

Q. How did you dispose of him afterwards?

A. I held him all the time during the firing, and could not get to fire any. I kept hold of him, till Mr. Brady gave orders to march back towards *James's-street* barrack.

Q. After those orders were given, did the Prisoner remain quiet?

A. He struggled the whole time going up *James's-street*, and from that to the Commander in Chief.

Q. Where did you first stop with him?

A. We stopped a few minutes at the barrack in *James's-street*.

Q. (*By the Court.* What is the name of the man who assisted you in holding the Prisoner?)

A. His name is *Goulding*.)

Q. As you stood before you seized the Prisoner, you were on the left—where did *Goulding* stand?

A. In the same division, near the centre.

Q. You stopped in *James's-street* barrack?

A. Yes.

Q. How long?

A. A few

A. A few minutes; I cannot say exactly.

Q. Did you take the Prisoner into the barrack?

A. Yes—he was taken inside.

Q. Had you a light?

A. Yes; there was a candle in the guard-house.

Q. Was Lieutenant *Brady* there?

A. I am not positive that he came into the guard-house—he was there at the barrack with us.

Q. Did any other soldier assist you in taking the Prisoner?

A. Yes, one *North*; he heard the pike fall when I called out to the man to stop.

Q. Did you go with the Prisoner to the Commander in Chief?

A. Yes.

Q. How did he conduct himself?

A. He struggled the whole way.

Cross-examined by Mr. BALL.

Q. Did this man receive any strokes from the soldiers?

A. I believe he did get a scalp or two.

Q. You say, when the firing began you saw this man?

A. Yes.

Q. You could not see him before?

A. He was quite close to me—not above two yards.

Q. There was an independent fire kept up?

A. Yes, after the first volley, by the subdivision.

Q. How many subdivisions were there in the whole?

A. Four, I think.

Q. Each in two ranks?

A. Yes.

Q. In what direction was the volley?

A. Straight down the street.

Q. How far was the first division advanced before the second?

A. About six paces.

Q. Were you in front or rear of the second subdivision?

A. In front.

Q. When you saw this man he was endeavouring to pass?

A. He was.

Q. How could you see that the man was endeavouring to pass?

A. He was doing all he could to pass.

Q. How near were you to the flags?

A. Close to them.

Q. Your face was to *Thomas-street*?

A. Yes, down towards the market-house.

Q. And his was to *James's-street*?

A. It was.

Q. Was he running fast?

A. He was.

Q. It was when he moved you saw him?

A. Yes.

Q. The night was dark?

A. It was.

Q. Suppose you had moved sideways to the left and he had stopped, how near would he be to you?

A. When I bid him stop, I only stepped to the flags and gripped him.

Q. Then he was close to you, and you were in the 2d division?

A. Yes.

Q. Five or six paces behind the 1st division?

A. Yes.

Q. They fired towards the market-house?

A. Yes.

Q. And he was upon a line with you behind the first division?

A. Yes.

Q. How many feet do you reckon in a pace?

A. Five feet.

Q. Then you were thirty or five and twenty feet behind the first division?

A. Not so much.—(Here the witness pointed to an object in Court by way of shewing the distance—representing it as between 10 and 15 feet.)

Q. Did you hear Lieut. *Brad* charging a man with having presented a pike at him?

A. No;—I was too busy taking care of the man I had.

Q. Did you discharge your piece that night?

A. No.

Q. *By the Jury.* From the time you took the Prisoner in *Thomas-street*, did you let him out of your custody till you saw him again in the guard-house?

A. No;

A. No; I never let him out of my hand.

James Waddle North,

Examined by the ATTORNEY GENERAL.

Q. You are private in the 21st regiment?

A. I am.

Q. Where were you on duty the night of the 23d of July?

A. I was taken from *Cork-street* to *James's-street* and *Thomas-street*, under the command of Lieut. *Brady*.

Q. Did you ever see the Prisoner at the bar before?

A. I did.

Q. When did you first see him?

A. As near as I recollect about ten o'clock on the night of the 23d of July in *Thomas-street*.

Q. Mention the circumstances attending your having taken notice of him?

A. I was in the second subdivision under Lieut. *Brady's* command, and seeing *Watt* go out of his rank to take a Prisoner, I made after him and came up as the Prisoner threw down his pike—I came up time enough to hear the pike fall, but did not actually see the pike in the Prisoner's possession.

Q. What did you do then?

A. *Watt* brought the Prisoner to the division—he was struggling very hard for liberty.

Q. (*By the Court.* In order to get loose do you mean?

A. Yes, my Lord; to liberate himself, to get clear of us.)—

There was a man of the name of *Goulding* assisting *Watt*, and I thought he would get away from them, and I came up to them, and the Prisoner behaved very refractory—he could hardly be kept in custody till we brought him to *James's-street*, and from thence to the commander of the forces.

Q. *By the Court.* Was he refractory the whole way?

A. He was, my Lord, but more particularly in *James's-street*.

Q. Did you see him by candle-light that night?

A. Not

A. Not till I saw him at the Commander of the forces ; but I had no occasion, being so close to him, and by the lamp I could see his person.

Q. By the Jury. What became of the pike ?

A. It was taken by the men of the division with the rest.

Q. Did you ever quit sight of the prisoner from the time he was first taken till you delivered him up to the Commander of the forces ?

A. For the time he was put into the guard-house, I did for a few minutes.

Q. You said you did not see the pike, but heard it fall—How do you know it fell from him ?

A. From the place in which it fell.

Q. Was there any other person near him ?

A. No one but *Watt*.

Q. Was there any other pikeman near him ?

A. No nearer than the rest of the party before us in front.

Cross-examined by Mr. MAC NALLY.

Q. Do you recollect whether your party challenged, as you came up near where you say the prisoner was, by asking—"Who comes there?"

A. No further than *Watt* desiring the man to stop.

Q. Was the answer given—"A friend?"

A. I heard no such answer.

Q. Either might have happened without your hearing it on account of the noise?

A. I heard what *Watt* said, and no answer could be given any way audible without my hearing it.

Q. He struggled hard, you say?

A. He did.

Q. That was to get out of custody?

A. No doubt.

Q. Do you not think that a man armed as you describe the Prisoner, would rather have made battle than suffer himself to be taken?

A. I think it would have been madness to have made resistance against so many as we were.

Q. You said there were many in front of you?

A. No, but that he was out at a distance from them.

Q. Do

Q. Do you not think a man would rather make battle, where there were many others along with him, than struggle by himself when in custody?

A. No, because if he killed or hurt any man, the comrade would immediately revenge him and kill the man.

Q. If in that struggle, when unarmed, his strength had effected his escape from you, would you not kill him after?

A. If we could we would—but certainly he did struggle to get away.

Q. The eye of a soldier, when he discharges his piece, is not very free from a shock from the piece?

A. If it be in the proper position it does not affect him.

Q. Is the observation true, that the flash of the pan, so far from aiding the fight, dazzles it?

A. Sometimes it may dazzle the eye, but it throws light upon the objects around him.

Q. *By the Jury.* Did you fire?

A. I fired one round at the place the bottle was thrown from.

Q. Was that before or after you saw the Prisoner?

A. It was after I saw him.

Extracts from the Proclamation were read, vide page 54, No. 1.

And the case closed on the part of the Crown:

When the case for the Prosecution was closed, and Mr. MAC NALLY rose on behalf of the Prisoner, THE COURT intimated to him, that it was expected he would confine himself to the statement of the Prisoner's case, and after the evidence for the Prisoner was closed, then his second Counsel might observe upon the whole of the evidence. But if the first Counsel in stating the case thought proper to observe upon the evidence, they would not permit the second Counsel to do the same.

[Mr.

MR. MAC NALLY.

My Lords and Gentlemen of the Jury.

The statement which I have to lay before you must be very concise indeed. I shall not make any observation upon the preliminary evidence, given by those brave men who took an active part in suppressing the insurrection, because that evidence only goes to establish the existence of that insurrection, and the existence of a conspiracy by persons, to the grand inquest unknown, existing on, and previous to, the 23d of July, and charged generally in the indictment.—I shall not, I say, take the slightest notice of that introductory evidence of insurrection and conspiracy, because it does not in any degree affect my client, who by that evidence is neither identified as being present, nor in any other manner implicated.

The Bench have been pleased to intimate that, in their opinion, the Counsel who states the case for a prisoner ought not to observe upon the evidence given by the Crown, or, if he does, the other Counsel will be precluded from observing thereon. The rule is new to me; yet far as the nature of the case will admit, I will endeavour to obey its injunction. I will not contest the propriety of the restriction, well knowing that my learned coadjutor is amply competent to render our client, whom we are assigned to advise, and to defend, every possible and efficient assistance that can result from learning and talent.—The Court, I say, having intimated their opinion, upon the irregularity of my speaking to evidence, where there is a second Counsel engaged, I take it that the rule is legally and properly settled—and whatever doubt may exist in my breast upon the point, or whatever difficulty I may have to contend with, it would be presumptuous and extremely wrong in me, now to promulge a controversial word upon the subject.

Gentlemen of the Jury, I admit you have a complete and unequivocal series of facts proved before you, by men of undoubted and unquestioned credence, that a rebellion existed in this metropolis upon the 23d day of *July* last. And, Gentlemen, I also acknowledge, that from the printed paper, entitled a Proclamation, and proved to be found in the depot of arms and ammunition
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in *Mass-lane*, from which a paragraph was read, you have complete evidence to shew, that the object of the principal conspirators was to establish a republic in *Ireland*, to be introduced by persons styling themselves "the Provisional Government."—Who were the members of that intended Provisional Government may be a question of curiosity? Perhaps the records of this Court may give information of those respectable legislators. Are they among the number of the conspirators convicted?—If so, one of those provisional governors, who has undertaken to put down the present constitution and set up a republic in *Ireland*, was a dealer in skins—another a flater—and a third a buyer and vender of cast-cloaths—but the ridicule appropriate to this intended republic and its members, has been already applied by the ablest mind that ever brought forward that test of truth (*Mr. Curran*).—I shall therefore only say, joining with my friend in sentiment and affection, to the peasant and the mechanic, that I trust in God the examples, which have been recently made, have had the proper effect, and will call the minds of those who have escaped from folly to common-sense, and convince them that the most efficacious mode by which they can serve their country and deserve the honorable title of patriots is, by returning to the enjoyment of peace, and to the sweets of industry.

Gentlemen, I am Counsel for the prisoner, and assigned to defend him by the Court, not as in common cases of felony, where my endeavours would be restricted to matters of law, but with a privilege to controvert and to animadvert upon every matter of fact given in evidence against him, or in his favour.—Thus situated and thus assigned, while I act as an advocate for him, I feel myself also the servant of the law and of the constitution, and as such at liberty to censure, with the severest reprobation and abhorrence that rebellion, in which, I trust, I shall convince you he had no concern, and also my approbation, reverence, and love to that constitution under which we live.—Gentlemen, surely no other proof of its excellence over all others need be adduced, than the freedom I exercise in addressing you now, and thereby shewing the privilege with which the law invests the prisoner, to select his own Counsel for the defence of his cause, to state his case, to controvert the accusation against him, and to observe and to argue upon the evi-

dence produced, and upon the credit of the witnesses brought forward, and sworn and examined on the part of the crown.

I fear I rere, and I promised to be concise.—Gentlemen the case of my client as to matter of fact is simply this:—He has been called upon to account for the possession which brought him to *Dublin* from his place of usual residence. It is not on every occasion that a man can call together retrospective matter with such accuracy as to shew the occasion of an anterior transaction, particularly where no notice has been given that such an account will be required; he is called upon so to do upon the spur of the occasion, and he is ready so to do, though no time nor notice was given him for preparation to rebut that fact.—He stands prepared to satisfy you, Gentlemen of the Jury, on that point, because common-sense dictated to him, that being the inhabitant of a town only sixteen miles from *Dublin*, it would be necessary to his defence and acquittal not only to shew the cause of his being in *Dublin*, at the time of the insurrection, but more particularly, why he was in *Thomas-street*, where that insurrection broke out. He will evince, and I am satisfied to your satisfaction, and, as I am instructed, by witnesses of unimpeachable credit, that his appearance in this city at that time was perfectly innocent, and his business clearly unconnected with rebellion.

This evidence, gentlemen, in junction with evidence of excellent character, will demand and meet your verdict of acquittal, and rescue the life and the property and the fame of the prisoner from the terrific and severe consequences of the accusation exhibited against him.—He has no pretensions to rank or situation, he has moved only in the narrow circle of humble life. The prisoner, gentlemen, is a baker, and he will satisfy you that, some time previous to the rebellion, in consequence of a failure of business in the county of *Kildare*, he came to *Dublin*, and determined on taking a house in *Ringsend*, for the purpose of carrying on trade in that village, and thereby earning an honest livelihood for himself and family. But it may be asked, what brought him to *Thomas-street* at so critical a time? I answer, as instructed, a brother-in-law of his dwelt there, and, while seeking for a proper habitation, he resided with him. It appears that on the 20th of *July* he was at *Ringsend*, making arrangements for

for his business. Upon returning to *Thomas-street* to the house of his brother-in-law, on the 23d, he was taken into custody. Gentlemen, you all must recollect the 23d of *July*, and I call upon the recollection of many of you who resided at a distance from the scene of horror, acted that night, whether you were not ignorant of the insurrection till you heard the drum beat to arms, and that alarm did not commence till the insurgents were put down.—Many persons in the vicinity of the city were ignorant of the rising till the subsequent morning. It was not known in *Leeson-street*, nor *Harcourt-street*, nor in *Gardiner's-row* till after those miscreants, who perpetrated the atrocities of the evening, had been defeated by a handful of the King's troops and had fled. Then, Gentlemen, apply these circumstances to the prisoner's case; consider whether this man at the bar might not have come from *Ringend*, after examining the house preparing there for his use, for the sole purpose of retiring quietly to his lodging and his bed. Consider whether he might not have repaired to *Thomas-street* utterly ignorant of the disturbance which had commenced and raged in his absence, and which at the time of his arrival there had nearly subsided.

But, another point is urged against him which demands observation.—It is said he struggled when made prisoner. I admit he did; but would not an innocent man struggle when suddenly seized, and in the dark? And does it not appear that he received two or three strokes, violent ones no doubt, from the soldiers who took him into custody. He struggled under those blows, he struggled to extricate himself, and to get free from those persons who inflicted them—and was not that natural? The human creature will not submit to outrage; a blow might be followed by the thrust of a bayonet, or of a pike, he could not tell which; the night was dark, and he was ignorant whether those who seized him were soldiers or banditti. Gentlemen, a coward smarting under blows, and fearing immediate death, will be roused into self-defence. He will either make resistance, or an effort to escape. Such was the struggle upon which so much stress has been laid to convict the prisoner of high treason.—An overt act of treason clearly it is not; neither is it evidence to support an overt act, but merely a circumstance, a weak circumstance, scarcely worthy
your

your attention : or if you do consider it as a fact, consider at the same time the Prisoner's situation and you must entertain a doubt as to the motive of his exertions.

As to the witnesses produced for the purpose of identifying the Prisoner as one of the acting conspirators—as one of those who was levying war against the Crown, by opposing the King's troops, I do not impeach the testimony of the soldiers, by imputing to them wilful perjury—I see no motive for their swearing falsely ; on the contrary, I cannot say they do not deserve credit as to many of the facts they have sworn to. But in a scene of such darkness and confusion, without impeaching their integrity, I may fairly advance the probability of their having been mistaken—and, upon discrimination of their evidence, taking it in a comparative view, you will find they have been inconsistent. What is the evidence ? one soldier says, “ the Prisoner was taken and he struggled, “ but he had no pike.” The other soldier says, “ I heard “ a pike fall,” but he candidly admitted he did not see the weapon ;—then observe, there is no proof from either of those men, that the Prisoner had a pike, and a jury are not to conclude guilt from inferences. Again, I do say, one of those soldiers swore rashly, and inconsiderate swearing goes strongly to create doubt in the mind of the hearer ; I repeat it, I do not charge the man with wilful want of veracity, but with rashness, resulting perhaps from too much zeal. He swears he knew the Prisoner by the flashes of the pan when the soldiers fired. Does that evidence deserve implicit credence ? I say the flash from the pans could not have assisted the sight of the soldier, so as to enable him to discern the features of a stranger with sufficient accuracy to identify his person upon oath. It has been known that the light of the sun has deceived men of great sense and sagacity ; it so happened a few years ago in England. Sir Thomas Davenport, an eminent English barrister, a gentleman of acute mind, and strong understanding, swore positively to the persons of two men, whom he charged with robbing him and his Lady in the open day light. He was positive and the hour he stated was about 2 o'Clock in the afternoon. But it was proved, by the most conclusive evidence, that the men on trial were at the time of the robbery attending a company at dinner, one as master of the tavern, the other as waiter, at so remote a distance from where Sir Thomas

was robbed that the thing was impossible. The consequence was the men were acquitted, and some time after the robbers were taken and the articles taken from Sir *Thomas* and his Lady found upon them—Sir *Thomas* on seeing these last men candidly acknowledged his mistake—and as I have heard gave a recompense to the persons he prosecuted, and who narrowly escaped conviction.

I obtrude this anecdote on your consideration, gentlemen of the Jury, to shew that evidence of identity however positive the witness may be, or however credible, ought to be received with the most delicate caution. When a man discharges a gun with the lock close to his eye, in my humble opinion, so far from the flash assisting his sight it would dazzle and render the object before him confused. The flash may illumine for an instant the figure of a man and make it perceptible, if near, but cannot distinguish his features with sufficient accuracy to enable the party discharging the piece to swear to them—the flash throws a light on the object, but that light has no continuance, it is momentary and there is not time for the mind to be impressed by a certain idea of any object seen through such a medium.

Consider, Gentlemen, all the circumstances—the night was dark, every shot was encreasing the smোক collecting about them, and the smোক encreased the darkness. The bravest man is not without feeling on such occasions—when the battle rages even the soldier looks more to himself than to others. I ask you then, how is it possible for one man to swear to the identity of another man on such an occasion.

I shall trouble you no further on the evidence—I fear I have involuntarily gone too far, and I have to thank the court for permitting me after the intimation they had given—I have now to submit to you the character which, I am instructed will be given in the Prisoner's favour—and the impression which it ought to make on your minds—I will point out to you the efficacy of a good character and in doing so I will adopt the want of Lord *Kenyon* late chief justice of England on the trials for treason in 1794. That learned and humane Judge expresses his sentiments, as to the weight which character should have in the minds of a Jury, thus—“ An affectionate and warm evidence of character, when collected together, should make a strong impression in favour of a Prisoner; and when those who give such character in evidence

"evidence are entitled to credit their testimony should have great weight with the Jury." *Thelwell's case.*

That kind of character the Prisoner will produce and support by such witnesses, as must have credit with you;—and here I must observe upon the species of character, which has been required on the preceding trials. It has been said a character for honesty is to have no effect—that a good father—an honest dealer may be a rebel and therefore the character that should be given is, that the Prisoner is a loyal man; but how is such evidence to be obtained where the loyalty of a man has never been spoken of, where his politicks have never been promulgated or heard of. Why, I know one half of the present Jury, and I would be competent, sanctioned by my own knowledge of their general characters, to swear I consider them honest, industrious, peaceable men—but as to their loyalty, I know nothing, for I never heard it questioned and am unacquainted with their political sentiments—those sentiments may be the secrets of their hearts, and concerning which I have never spoken to any of them. God forbid then, that honesty and peaceable conduct should not contribute to a man's reputation as a good subject; surely such demeanor tends to shew that the man would not be disloyal, because the consequence of disloyalty would be the loss of all his industry acquired—the confiscation of all that property which his labour had collected. I will read to this point, a passage from a trial in England which will shew that I lay down the right and true rule. We have all heard of chief Justice *Scroggs*, as cruel a prerogative Judge as ever sat upon the bench. I will read what he said in regard to character in a prerogative case, a case too where life was not at stake, for in favour of life no species of character has ever been refused. The case is that of the *King ver. Benjamin Harris*, who was tried in the 32d year of *Charles 2d* at Guild-hall, London, on an indictment for a seditious libel. *Scroggs*, Chief Justice, admitted the Prisoner to call a witness to his character who deposed, he knew him to be a fair conditioned quiet and peaceable man, and that he was so reputed among his neighbours, and never was reputed to scandalize the King or his government. 2 *State trials*, 10. 38.

Conformably to this authority, we will shew by witnesses of credit, that the Prisoner now on trial is a quiet man, has been always so considered by his neighbours, and has never

never been reputed to be a disloyal man—it will not injure the defence, I trust, that we add, he has always been esteemed an honest man.

Gentlemen of the Jury, this is all I have to lay before you on behalf of my client—and I rest satisfied, that as you will act under the direction of the court in point of law; so in considering the facts given to you in evidence, you will honestly and without prejudice execute your peculiar right in deciding on that evidence; so as to satisfy your consciences by acquitting him, if a doubt presses upon your minds—clear I am, from any knowledge of most of you, that your verdict will be such as just and humane men ought to find, such as the public must approve, and such as will even satisfy the Prisoner.

Jeremiah Mac Shee.

Examined by Mr. BALL.

Q. Where do you live?

A. I have a house at *Ringsend*.

Q. Who occupied it lately?

A. One *James Carroll*.

Q. When did he leave it?

A. Six months ago.

Q. Have you set it?

A. I was going to set it.

Q. To whom?

A. To *James Byrne*, the Prisoner.

Q. What business was he about to follow there?

A. As I understood from himself, it was for the baking business.

Q. Did you see him there?

A. I saw him at the *Pidgeon-house* three or four days before the breaking-out.

Q. Was that the first time you saw him?

A. It was.

Q. What agreement did you make with him?

A. We did not come upon a settlement, he was to call again to make the agreement; I was ill at that time.

Q. You have some appointment?

A. I belong to the artillery at the *Pidgeon-house*.

Cross-

Cross-examined by Mr. SOLICITOR GENERAL.

Q. What situation do you hold in the artillery?

A. A gunner—on the pension list.

Q. There is a good deal of cannon at the Pidgeon-house?

A. There is.

Q. You never saw the Prisoner before that day?

A. No, and I was lying in my bed very ill of a sprained leg.

Q. What brought him there?

A. To ask me to rent the house to him—he got admission into the place, by saying he wanted to take this house from me.

Q. You never saw him before?

A. No.

Q. Nor since?

A. No.

Q. How long did he continue there?

A. I cannot say.

Q. He might have continued there to walk about?

A. He might:—I told him if he wanted to see the house, he might apply to Mr. Corcoran, from whom I rented it.

Q. (By the Court—did you advertize the house in any way?

A. I did:—there were bills upon the house.)

Q. Did you refer to any person?

A. I did, to Mr. Corcoran.

Q. Where does he live?

A. In Rings-end.

Q. Was that stated upon the bill?

A. It was.

Q. But the Prisoner applied to you?

A. He did.

Q. Did you ever hear that any attack was meditated upon the artillery at the Pidgeon-house.

A. I did.

Q. Did you hear that the rebels intended to attack Island-bridge.

A. I did.

Q. There are cannon there?

A. Yes.

Q. In order to make an attack upon the Pidgeon-house,
do

do you not think it would be useful to see the place?

A. I cannot say that.

Q. Was every person admitted among the cannon?

A. Not where there was cannon,—but upon the wall down to the light-house.

Q. Your place is among the guns?

A. It is, close to the battery.

Q. How long he remained among the guns, you cannot tell?

A. No.

Q. You and the Prisoner did not stay much together?

A. No.

Q. You drank together?

A. We did—three of us had half a gallon of porter.

Q. You never saw the man before?

A. No.

Q. There was another man in company?

A. Yes:—one *Kearney*.

Q. He was a stranger to you?

A. He was.

Q. They came together?

A. They did.

Q. And went away together?

A. Yes.

Q. He never came back to enquire about the house?

A. No.

Q. The house which you had to let, had been a public house?

A. It was, and he said he wanted to build an oven in the cellar of it.

Q. Where did he say he came from?

A. He said from *Thomas-street*.

Q. Did he say he came from *Naas*?

A. No, I think he said he came from *Thomas-street*.

Q. *By the Jury*. Did you ever live in that house in *Ringend*?

A. No.

Q. Have you any lease of it?

A. I have.

Q. In the bill on the house, was there any reference to yourself, either as to terms or otherwise?

A. I wrote the bill myself—I desired application to be made to *Corcoran*.

Q. Did *Corcoran* send the man to you?

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A. He

A. He did not.

Q. Did you refer the man back to *Corcoran*?

A. I desired them to go to *Corcoran*, to let them see the house, as *Corcoran* had the key.

James Kearney,

Examined by Mr. MAC NALLY.

Q. Do you know the Prisoner at the Bar?

A. I do.

Q. Do you know the last witness?

A. I do.

Q. Was you at the residence of the last witness with the Prisoner?

A. I was.

Q. Upon what day?

A. On *Thursday*.

Q. In what month?

A. Three days before the disturbance in *Thomas-street*.

Q. What occasion had you to go with the Prisoner?

A. When Mr. *Byrne* came to town, he called to me at *Ringsend*, and enquired of me if I knew any place at *Ringsend*, or about the place, that would answer for public business for his wife, and that he would build an oven in—I told him of a house in *Ringsend*, with a bill upon it, which I thought would answer—he said after some time when the business would go on, he would knock up an oven and I would be a partner.—

Q. What business were you?

A. A Baker.

Q. A Master, or journeyman?

A. A Master formerly; but have dropped it, not making any thing of it.

Q. Of what business is the Prisoner?

A. A Baker.

Q. How long have you known him?

A. Thirty years.—I worked journey-work for him—we went to *Shew's* and had some porter—he was lame from an accident of the mail-coach going over his leg—and we returned to my house, where Mr. *Byrne* slept.

Q. Did *Byrne* go to see the house?

A. He did not.

Q. He slept at your house?

A. He did, two nights, *Thursday* and *Friday*.

Q. Was

Q. Was he there on *Saturday*?

A. Hej was.

Q. How long did he stay?

A. Till two o'clock, we were waiting for *Shée*, who was to come down to shew the house—but he did not come.

Q. Did *Corcoran* shew the house?

A. The tap-room belonged to one *Brennan*, and *Corcoran* had the setting of it—*Brennan* said a tailor, next door, had offered money for it.

Q. Can you tell whether it was at a sufficient price?

A. I cannot tell.

Q. At what time did the prisoner leave *Ringfend* on *Saturday*?

A. After two, drawing to three.

Q. Where did he go to?

A. To my house, No. 13, *Townsend-street*.

Q. Were you with him?

A. Yes.

Q. How long did he stay there?

A. Why, by the time we parted at the new street, it was half-past nine o'clock.

Q. What new street?

A. Near the New-bridge.

Q. Then you parted with him?

A. Yes;—He told me he intended to go over the water, to see if Mr. *Kennedy* had come from *Tullamore*.

Q. Is Mr. *Kennedy* a corn-factor in *Abbey-street*?

A. Yes.

Cross-examined by Mr. PLUNKET.

Q. You have known the prisoner a long time?

A. Yes, thirty years.

Q. Where did he live?

A. First in *Abbey-street*.

Q. How long was it since you saw him in *Dublin* before that day?

A. I cannot tell.

Q. Did he not live in *Naas*?

A. He did.

Q. When did he come from *Naas*?

A. The *Tuesday* before.

Q. Did you see him before *Thursday*?

A. No.

A. No.

Q. Where did he lodge ?

A. At his brother-in-law's—one *Gilligan*, in *Thomas-street*.

Q. In what part of the street is that house ?

A. Near the *Butter-crane*.

Q. He lodged there on *Tuesday* night ?

A. He did.

Q. Where on *Wednesday* night ?

A. I suppose in the same place.

Q. And where on *Thursday* and *Friday* ?

A. At my place.

Q. Are there any of the King's stores in the neighbourhood of *Townsend-street* ?

A. There are.

Q. How far from your place ?

A. Not far.

Q. At what time of the day did he come to you on *Thursday* ?

A. About two o'clock.

Q. You were not at *Ring-fend* at that time ?

A. I was working there.

Q. How did he know it ?

A. He might easily know, because I worked there long ;—he might hear it at my house.

Q. Were you surprized at seeing him ?

A. No, because I saw him before, looking for a house of the kind at the same place, or the *Rock*.

Q. How long before ?

A. About three months.

Q. Had he been following the baking-business in *Naas* in that time ?

A. No.

Q. What did he follow ?

A. He lived with his brother, *Peter*, who lived with *Mr. Montgomery*.

Q. You went immediately with the prisoner ?

A. I did, as soon as I drew a batch of bread.

Q. You went down to *Mac Shee's* ?

A. Yes.

Q. It was then near three o'clock ?

A. It was.

Q. Did you return home after leaving him there ?

A. No.

A. No, we returned together.—We stopped at *Lynch's*, my employer, who disputed with me, because I was getting this house for *Byrne*.

Q. But then you returned to *Townsend-street*?

A. Yes, and stripped and went to bed.

Q. So that it was bed-time when you returned to town?

A. It was late.

Q. What hour was it?

A. About nine.

Q. It was two o'clock when *Byrne* went to you?

A. Yes.

Q. Then you arrived at *Mac Shee's* about half-past three, and returned home at nine, so that you must have delayed four hours with the artillery?

A. I do not say that—I was there three-quarters of an hour.

Q. How do you account for four hours, after allowing sufficient time for walking?

A. I went to Mr. *Toole's*, and got some bread and cheese.

Q. But how do you explain the four hours?—Were you not at the *Pigeon-house* looking at the stores and cannon?

A. I never did—I did not advance the breadth of my nail.

Q. You enquired particularly the terms of the house?

A. We did.

Q. What was the rent?

A. Eighteen pounds a year and ten pounds fine.

Q. They disagreed?

A. Yes; *Byrne* referred it to me.

Q. Then why did not you conclude the bargain?

A. Because we did not look at the house.

Q. Why not?

A. I did know *Corcoran*.

Q. Who is he?

A. He belongs to the Revenue.

Q. Has not he a house there?

A. He sold the good-will of it.

Q. The prisoner slept with you on *Thursday* night?

A. Yes.

Q. You went back on *Friday*?

A. Yes.

Q. You

Q. You saw the house then ?

A. Yes.

Q. Then why not conclude the agreement at that time ?

A. Because *Mac Shee's* wife was to call upon me and she did not ; she was taking care of his fore leg—It was injured by the mail-coach, as he said.

Q. Were you all the day of *Friday* with him ?

A. I was there ; he stayed the whole day with me.

Q. Did he sleep with you that night ?

A. He did.

Q. On *Saturday* morning, I suppose, you went to *Ring send* again ?

A. Yes.

Q. You did not go again to *Mac Shee's* ?

A. No, we were looking at another house.

Q. The prisoner, *Byrne*, had not gone that morning to see *Gilligan* ?

A. No.

Q. What time did you leave *Ring send* on *Saturday* ?

A. About two.

Q. What time did you leave him in the evening ?

A. I did not leave him at all.

Q. You did not walk to *Thomas-street* ?

A. I did not go there at all.

Q. At what time did you and *Byrne* separate ?

A. About half past nine.

Q. Where ?

A. At the new street, between the College and the bridge.

Q. Why did he not sleep with you that night ?

A. He said, he wanted to see Mr. *Kennedy*—and he said he would go to his brother-in-law's, as he wanted to be off in the packet next morning.

Q. That was to go home to *Naas* ?

A. Yes.

Q. At six in the morning ?

A. Yes.

Q. Had you fixed any thing finally about the house on *Saturday* ?

A. What fixing could I make about it.

Q. Was you determined to take it ?

A. Yes—I told the man this morning I would take it.

Q. Did you tell him so on *Saturday* ?

A. How

A. How could I, when I did not see any person.—
Byrne said he would send me a letter on *Tuesday* to take the house.

Q. Why did he not take it while he was in town?

A. Because he did not see it, and he depended upon me to look at it, and if I liked it, to take it.

Q. He never saw the house?

A. No, he never did.

Q. Either on *Thursday* or *Friday*?

A. No.

Q. What is your name?

A. *Kearney*.

Q. Otherwise *Carney*.

A. I do not know—it is *Kearney* one way, and *Carney* another.

Q. Have you any friend or relation?

A. I have both.

Q. Have you lost any of them?

A. Yes, God took them.

Q. Was any taken lately?

A. No.

Q. What country are you?

A. County *Kildare*.

Q. You heard of no disturbance on *Saturday*, the 23d of *July*?

A. No, not a word till the next day.

Q. When on the next day?

A. Between ten and eleven, when I got up.—I worked very hard, and I sleep generally on *Sunday* morning:—when a man is twenty hours on foot, he sleeps a good deal afterwards.

Q. Had you worked that *Saturday*?

A. No,—I did not work at all that day; but from the habit of working hard upon *Saturday*, I generally sleep upon *Sunday*; and having to go to work early the next morning, I slept upon that morning.

Q. Did you work any that night between ten and eleven o'clock?

A. No.

Q. When you heard of the disturbance in *Thomas-street*, did you go to enquire whether your friend had gone in the packet?

A. I did not—I thought there was no danger of an innocent fellow at any time.

Q. Why

Q. Why did he go without seeing Mr. Kennedy?

A. How can I tell.

Q. Did he not tell you?

A. No;—not whether he was come home or not.

Q. Did he go to Mr. Kennedy's?

A. I understood he did, and the maid answered from the area, that he did not come home.

Q. Who is she?

A. The servant-maid.

Q. Did you know her?

A. Yes.

Q. Did you call there since?

A. No.

Q. Is she there still?

A. I believe so, barring she is discharged.

Q. Have you a brother?

A. I have.

Q. Where?

A. In *Dublin*—he is a cooper by trade, and worked in *Marlborough-street*.

Q. When did you see him last?

A. I did not see him this fortnight.

Q. Where is he now?

A. I suppose there.

Q. Can you tell the name of the person he works with?

A. I cannot.

Q. Have you seen your brother since the 20th of *July*?

A. I have.

Q. How long since?

A. Eight or nine days ago.

Q. I thought you said you did not see him for a fortnight?

A. What do you make eight or nine days but a fortnight.

Q. You cannot tell the name of the employer?

A. No.

Q. Did you see many friends from *Kildare*?

A. Not a man since these ten years.

Q. Did you hear of *Edward Kearney*?

A. I heard people speak of him without there.

Q. Did you see him?

A. I

A. I saw his dead body, but I did not know whether his name was *Kearney* or not.

Q. Was he a relation of yours or not?

A. He is not.

Q. Was he?

A. No, nor never will.

Q. Was there any charge made against you?

A. No.

Q. Were you ever in custody?

A. I was taken by some gentlemen, being out after nine o'clock—I went to pay money at *Ringland*.

Q. Did you say you were a baker?

A. I was tried before Alderman *Rose*; and I told him the truth.

Q. Did you say you was engaged about taking a house?

A. No, I had no occasion; I went to pay money, and there is money due to me.

Q. By the Jury. When the prisoner called upon you at *Ringland*, did he say he had been at your place in *Townsend-street*?

A. No.

Q. Did you go to *Cortigan's* or to *Shoe's* first?

A. I went to *Shoe's* and not to *Corrigan's*.

Q. Was there any person in the house?

A. No, barring a mouse, or some such devil.

Here Mr. *Courtney*, a gentleman, who happened to be in Court, addressed the Judges, and requested the witness might be detained until he should give some evidence against him.—Mr. *Courtney* was desired to come upon the table, and he was sworn.

Peter Rutledge Courtney, Merchant, examined by
MR. ATTORNEY GENERAL.

Q. Did you observe the last witness during the time he was giving his testimony?

A. I did.

Q. Did you ever see him before?

A. I did.

Q. Upon what occasion?

A. I was upon guard at one of the bridges, the name
No. 4. F of

of which I forget, but it is between the *Black Rock* road and the draw-bridge, near *Mount-street*.

Q. It is near the dock?

A. It is.

Q. Upon what night?

A. I do not well recollect, but it was early after the breaking out of the rebellion, about three weeks ago.

Q. Had you any intercourse with the witness upon that occasion?

A. I had; he and two other men came down endeavouring to pass our guard, they were stopped by the sentry and sent to our guard-room; the witness said, he thought it a great hardship to be taken so early and prevented from going into town; it was between nine and ten o'clock, as the first sentry is not placed till nine. I was corporal of the guard, and asked him, as well as some others, where he was going—He said he was going home, that he had been at the *Black Rock*, and would not be let pass with some other persons who were in a jingle, and were stopped by another guard at *Baggot-street* bridge. We kept him in the guard-room till morning, and finding no charge against him, we desired him to be more careful, and not to be out so late.

Q. Where did he say he lived?

A. He said he lived in *Marlborough-street*; and, when going away, he did not go towards *Marlborough-street*, but went back again towards the *Rock*.

Q. *By the Court.* Did you ever see the man before?

A. No, my Lord, or since, till this day.

Cross-examined by Mr. BALL.

Q. This was three weeks ago?

A. Yes.

Q. You never saw the man before?

A. No.

Q. Do you not think you might mistake one brother for another?

A. I might, but do not think I would mistake their story.

Q. Have you a brother?

A. I have two.

Q. Were you ever mistaken for your brother?

A. I

A. I was, by you.

Q. You remember, that I took you once under the arm and walked through the street mistaking you for your brother?

A. I do.

James Kennedy again examined by Mr. PLUNKET.

Q. Were you ever taken up but the one time you mentioned?

A. No.

Q. That you say was on *Monday* last?

A. Yes.

Q. Was any person with you?

A. Yes, there was a drunken waiter taken up.

Q. What was the account you gave of yourself?

A. That I was paying money at *Ringend*, and was returning home.

Q. To *Thomas-street*?

A. No, but to *Duke-street*, where I worked.

Q. Did you say, that you were taking a house?

A. No, how could I, I was not taking a house at that time.

Q. But did you say so to the guard?

A. No, I did not.

William Ratheram, examined for the Crown, by the ATTORNEY GENERAL.

Q. Do you belong to the yeomanry forces?

A. I am first serjeant of the 5th company of the *Merchant's Corps*.

Q. Were you upon guard last *Monday* night?

A. I was serjeant of the guard last *Monday* night at the Canal-bridge, upon the *Artichoke Road*.

Q. Did you see *Kearney*, the witness, there?

A. I saw him in the guard-house.

Q. Did you hear the account he gave of himself here?

A. I did.

Q. Was it correct according to the account he gave at the guard-house?

A. It was not; the sentry at the gate took this man, who was drunk, into custody; the serjeant being called out,

out, I went and interrogated the man, upon what business he was out at that hour ; he sayed he went to take a house for a friend at *Ringford* and in making the bargain they drank a little extraordinary and were out late.

James Kearney, examined by Mr. PLUNKET.

Q. Is what Mr. *Rotheram* has said true or false ?

A. I cannot say whether it is or not ; I said no such thing.

William Rotheram, cross-examined by Mr. MAC NALLY.

Q. Did you hear *Kearney*, the witness cross-examined.

A. I did.

Q. Did you hear him say that even so late as this day the bargain about the house is not concluded ?

A. I did.

Q. Did you take any memorandum of the charge against him that night ?

A. No ; I sent him to *St. Andrews Watch-house* with another prisoner.

Peter Butler,

Examined for the Prisoner by Mr. BALL.

Q. Where do you live ?

A. In *Abbey-street*.

Q. What is your business ?

A. A Baker.

Q. Do you know Mr. *Kennedy* ?

A. I do.

Q. Does he live in *Abbey-street* ?

A. He does.

Q. Whom do you work for ?

A. I carry on business for myself.

Q. What business does Mr. *Kennedy* follow ?

A. He bakes biscuits for government.

Q. Did you ever see the Prisoner at Mr. *Kennedy's* house ?

A. Often.

Q. How near do you live to Mr. *Kennedy* ?

A. Almost opposite his door.

Q. Did you see the Prisoner the night of the 23d of *July* ?

A. I did.

A. I did.

Q. Where?

A. At my own house.

Q. At what hour did you first see him that evening.

A. Very near nine.

Q. When did he leave you?

A. About half past ten: he would stay till morning, if I could drink with him, I was not well and I said to him, it was a shame for him to stay so long in town. He said he had been taking a house in *Ringend* with *Hearney* and had been drinking with him; I said, it was a shame for him to keep such company; he said the man lived in the place and he was taking his assistance.

Q. Where did the Prisoner lodge?

A. At *Gilligan's* house in *Thomas-street*.

Q. Whereabouts?

A. In the middle of the street, up beyond *Dirty-lane* near *James's-gate*.

Cross-examined by Mr. TOWNSEND.

Q. Are you sure that *Gilligan's* house is near *James's-gate*?

A. I am.

Q. The Prisoner was very intimate with you?

A. He lived at my house.

Q. When?

A. Five years ago.

Q. Was he with you shortly before this night?

A. Not a foot, only that time he came to look for Mr. *Kennedy*, as he told me.

Q. You drank with him that night?

A. Yes, we had some porter; he stayed with me some time about three quarters of an hour, the girl was washing the parlour and we agreed to go to another place, after he had been half an hour at my house, and then we went to another place and had some porter, he stayed till I am sure it was past ten o'Clock.

Q. Perhaps it was eleven?

A. No it was not.

Q. What night was it?

A. Saturday night.

Q. Was not his lodging at *Townsend-street*?

A. He slept there, as I understood.

Q. And

Q. And lived with *Kearney*?

A. I believe so, nobody would treat him as that man did.

Q. Then after ten o'Clock he was to go to *Thomas-street* after sleeping two nights at another place?

A. He would have stayed with me all night, I said it was a shame for him to be so late—he said the hostler would let him in.

Q. You say, he would have stayed longer with you?

A. He would; he wanted me to go to another place to drink more; but I pushed him away and said he was an unfortunate fellow.

Q. How far is *Gilligan's* house from *Dirty-lane*?

A. As far as from this to *Boot-lane*.

Q. (*By the Court.* Upon what side of the street as you go to *James's-gate*?

A. The left side as you go up; it is on the same side as *Mr. Guinness's* brewery.

Q. Did the Prisoner ever work with you?

A. Never.

John Graham examined by Mr. MAC NALLY.

Q. Where do you live?

A. In *Bishop-street*.

Q. Do you know the Prisoner?

A. I do.

Q. How long?

A. Ten or twelve years.

Q. What is his general character?

A. When I had dealings with him, I thought him an honest man, but rather an indolent man.

Q. Have you continued to know him since you dealt with him?

A. Not for some years past.

Q. Did you ever hear his loyalty impeached?

A. Never.

Cross-examined by Mr. SOLICITOR GENERAL.

Q. How long since you ceased to know the Prisoner?

A. I know very little about him these three or four years past.

Q. You thought him an indolent man?

A. Yes.

Q. Not

Q. Not likely to make money by industry?

A. No not very industrious.

Allan Rutherford examined by Mr. BALL.

Q. Are you acquainted with the Prisoner?

A. We were school fellows together, and I have known him these last four years in *Naas*.

Q. Did you ever hear his loyalty impeached?

A. Not till this time.

Cross-examined by Mr. MAYNE.

Q. You live near *Naas*?

A. Yes.

Q. Did you live there in the year 1798?

A. I was forced in there by the rebel party.

Q. Has the Prisoner any friends in that country?

A. He has a brother in *Naas*.

Q. Do you know the *Byrne*, who lives at the ten mile stone?

A. Yes.

Q. Is he a relation of the Prisoner?

A. Not to my knowledge.

Q. Did not many people leave *Naas* on *Friday* the 22d of July?

A. I went to *Naas* that day.

Q. For what purpose?

A. To give information to the gentlemen of this rising, and I gave information to Colonel *Wolfe*.

Q. Many people left the town?

A. I cannot tell how many—there were a good many certainly.

Q. Was it not the general reputation of the country that they went to take *Dublin*?

A. It was, but the Prisoner went to town some days before.

Q. Did any persons from that part of the country suffer upon the night of the 23d.

A. Some were killed, some were wounded, and some taken.

Here the evidence on behalf of the Prisoner closed.

Felix

Felix Brady again called and examined by the Court.

Q. Be as accurate as you can as to the time the action took place in *Thomas-street*?

A. To the best of my recollection, it could not be more than half past nine, and as far as I recollect we were returning from *James's-street* by ten o'Clock and rather before it.

Q. By the Jury. Are you positive that the action was over at half past ten?

A. I am positive of that.

The evidence closed on both sides and the court seemed to be of opinion, that Mr. BALL was not entitled (in strictness) to observe upon the evidence, as Mr. MAC NALLY had made observations upon it—however it was agreed, that Mr. BALL should be heard upon this occasion, if he wished to address the Jury.

MR. BALL.

My Lord, and Gentlemen of the Jury,

I feel a more oppressive feeling in rising to address you upon this case, than has ever attended me upon any other occasion, tho' even in itself of equal importance. From the nature of evidence that has been given, a series of evidence demanding a most minute examination and comparison of facts and circumstances, and which in a great measure leaves the fate of the Prisoner to be determined by the effect of the observations that his counsel has to make upon them—and the degree of force and perspicuity with which he shall be able to communicate to your breasts—the impressions and conclusions of his own mind.—

Gentlemen, one principle and leading feature in the defence of the Prisoner is precisely that which was anticipated and challenged by Mr. ATTORNEY GENERAL in his statement.—He, supposing that the town of *Naas* was, as it were the hive from whence the swarm of insurgents, on the fatal night of the 23d of *July*, had been supplied, and knowing that the Prisoner was an inhabitant of that town, thought that alone was some reason to involve him in suspicion—and I should be ready to admit that that circumstance, especially when coupled with the fact of his being on the fatal ground where the business was going on, would naturally create a strong suspicion of guilt, unless

unless he shall fully, completely and satisfactorily account for his being in *Dublin* on that night for some defined and innocent purpose, and under circumstances inconsistent with his having any participation in the insurrection.—I do confess, that while the ATTORNEY GENERAL stated these circumstances as the ground upon which the Prisoner was so completely prepared to meet the challenge of the ATTORNEY GENERAL, that I entertained no manner of doubt, that if the case stated to me in my brief should be proved by witnesses whom you would believe, that you must acquit the Prisoner—that was my impression and upon that ground I anticipated your verdict of acquittal—and upon the case made out in evidence for the Prisoner I now demand that verdict.

The learned counsel who preceded me, having made many strong and pertinent observations upon the evidence for the crown, the Court seemed to be of opinion that in permitting me to speak after him, they granted an indulgence, which was not intended by the legislature, when it gave to persons accused of High Treason the privilege of defending themselves by counsel—I shall therefore compress into as narrow a compass as possible my observations on that part of the evidence (namely the evidence for the crown) which has been already spoken to on behalf of the Prisoner.

There is not a single *fact* of any sort imputed to the Prisoner by the witnesses for the prosecution, nor any circumstance in the smallest degree affecting him, except the one circumstance of the pike, and out of a guard of 50 soldiers and their officer, not one person has been able to say any thing as to that fact, except one single soldier—the evidence of that single soldier, and the circumstances accompanying the facts which he has stated, I entreat your cool and cautious investigation—consider the position of the several parties concerned in the transaction—the soldiers were proceeding in an easterly direction, the rebels were before them, the first division of the military were advanced 5 or 6 paces before the second, the Prisoner was discovered on a line with the second division, his face towards the west—the night was extremely dark—there was no ray of light to exhibit any object except that which proceeded from the fire of the musquetry. A volley was fired by the front division, and by the light of that volley, fired behind the Prisoner's back and 5 or 6 paces from him

soldier affects to say, that he not only saw the pike fall from the Prisoner's hand, but that he also saw and distinguished his face, and it is in evidence that the wind was blowing from the east, and therefore by throwing the smoke back upon the party must have materially increased the obscurity and darkness of the scene.

I do not wish to argue on the intentional truth or falsehood of the evidence of the soldier—it is possible he may have intended to deceive, or he may have intended to give just and true evidence according to his view and conception of the facts—which at best must be confused, if not absolutely doubtful and uncertain—but you, Gentlemen will consider, whether it is possible, that the light from musquets fired from the west, when the wind was easterly, could shew the face of a man at such a distance, and in such a relative position—back to back with the soldiers who fired, and even tho' you should think it physically possible, your next consideration will be, whether such a light may not possibly have missed the soldier, and whether with a good intention, he may not state *that* to you, which he may believe to be true, and yet you may be of opinion, that he could not have such an accurate knowledge of, as to authorize you to take away the life of a fellow creature—and the more especially as, independant of any case made out by the Prisoner, he was stated by the witnesses for the crown to be in a situation not consistent with his being a party in the rebellion—he was not observed, till the first division had passed by five or six paces, when it is said the left hand man saw him upon the flags; and it is alleged, he was in the act of making his escape—now what is the direction that a man would take in making his escape from such a party?—a volley had been discharged by the first rank—their fire for the moment, at least, was spent;—there were three or four more divisions behind, each at a distance of five or six paces from the rank before them—most of them at least having their arms loaded. The first instinct which would occur to any of the mere animal tribe, much less to rational men, if his object were to escape, would be, not to rush upon the other divisions, but to avoid them altogether, either to remain with his party, if he were one of the rebels, or to fly in a quite different direction from that which it was admitted he was taking—so that his going in the direction stated, is inconsistent with the fact
of

of his being joined with the insurgents—for actually it was not probable that any of the rebels would think of affecting their escape by flying *past* the whole body of the military, when they might have turned their backs and fled *from* them.

But Gentlemen, if there be any weight in the observations I have made on the evidence, against the Prisoner see how strongly these observations are corroborated by the evidence in his behalf—The evidence is, that he left Naas, not only on a lawful occasion (as the ATTORNEY GENERAL has called upon him to shew) but with an intention to return where none of the rebels could have so intended—that during the whole of the 23d of July and of several preceeding days, he was busily employed upon that business, which had occasioned his journey to Dublin—and that accidental delays in that business had prevented his return home as he had intended—that he came from a remote and undisturbed part of the city, to which he had been brought by the prosecution of his honest and lawful pursuit---that he was advised by his friend to go home to his lodging in Thomas-street and that to that lodging he did by that advice repair---and to this series of facts proved by his own witnesses, the witnesses for the crown have added, that on his road to that lodging in Thomas-street he was found, *not* among the rebels who were in front of the soldiery, fighting whilst their hopes of success or courage would enable them to fight, and with the open street behind them, affording a retreat towards the east, if they should find it necessary or adviseable to retreat or escape---but at the side of the soldiers, pursuing a westerly direction---The witnesses, on behalf of the Prisoner, underwent a most severe cross-examination---it has occurred to us all to see prosecutions carried on with zeal and diligence to convict, and great skill and address and uncommon ingenuity exercised to detect a supposed fabricated defence---but the efforts of the present day to confound the witnesses were superior to any thing I have ever heard---however, by the steadiness of those witnesses, the consistency and undeviating uniformity of the testimony they have given, under the strict scrutiny with which they were pressed, the authenticity of the case has been established, and has acquired additional and I cannot but think, irresistible strength.

Gentlemen, with regard to the times sworn to by the different witnesses, there appears something like a contradiction between the time stated by the witnesses for the prisoner, and that stated by the witnesses for the prosecution.—I do think, that is the only part of the evidence upon which it is immediately necessary to argue in support of the evidence for the prisoner; and convinced as I am myself, that the apparent variance between the evidence is not fatal to the credit of the prisoner's witnesses, I have but little doubt, that I shall be able to satisfy your minds on that point.—If two men, upon a certain, defined and single fact, shall each give a different account, one certainly must speak intentionally false.—But if the fact be of such a nature, as at all rests in conjecture, to which the common usage of mankind has given great and general latitude, such as time, exact precision cannot be expected, and a complete coincidence would be the very circumstance, which would induce a reflecting man to suspect, that there was some practice to deceive. Mr. *Brady* says, it was half past ten, when the transaction took place in *Thomas-street*;—he speaks upon belief, not having resorted to a watch or clock upon the occasion.—He did not calculate by any fact by which the exact time could be ascertained, as by change of sentries, or by reference to any guard regulation—he spoke and could speak, upon conjecture only.—Time, with reference to facts, is certain—calculated by itself, and relating only to itself, Time is the most vague and uncertain of all things.—That one event happened before, after, or cotemporary with another, as the supposed case might be, is a clear certain definite fact—and of two statements, differing as to such a fact, one must be morally false.—The duration or spaces of time not measured by fixed concomitant facts, not ascertained by revolutions of days or seasons—defined by arbitrary portions—by hours and by minutes, that have nothing to mark their periods, their beginnings and their endings, must always depend on vague conjecture—are founded only on guess.—Had the subject of difference between the witnesses been the question of light or darkness, or the doubtful glimmer that intervenes between both, the variation must have been imputed to fraud; as it is, it must here be placed to the account of the natural uncertainty of the thing in question.—To remedy this uncertainty

certainly in a matter which the convenience of mankind requires to be rendered certain, we have recourse to the mechanical inventions of clocks and watches, but even those are liable to err—I would appeal to our own tried and frequent experience on this subject.—I would venture to say, if any of you were called upon to say what the hour is at this moment, you would all mention different hours or parts of hours, and that not one of you would name a time that would not be refuted by looking at his watch, and in your watches would be found perhaps as much variety as in the several guesses you should make yourselves. Nay, even the public clocks of the town do not agree—then see what the supposed contradiction is—he was in company with a poor sickly man, who was anxious to get to his bed, which he could not do till he had first got rid of his friend, that friend too (the prisoner) something intoxicated—the night advanced—the state of his mind calculated to make the time hang heavy and appear long.—He is of opinion, it was half past ten o'clock before they separated.—He did not say it was so by his watch—he did not refer to a clock, and, if he had, it might have misled him:—his computation then might also deceive him.—Gentlemen, you cannot but be of opinion, that two men, intending each of them to speak truth, may differ in the hour at which a shot was fired, or other fact happened, and may of course, without fraud or crime or moral falsehood give a different, and some of course, innocently, a false account.—But what is the inaccuracy here—it is, in my humble judgment, such an inaccuracy as sets up the witness, *Butler*, and his credit, instead of putting them down.—Does not the prisoner know at what time he was apprehended, as far as the time could be ascertained?—And is he to be charged with suborning a witness to state a fact which is utterly inconsistent with his defence? If the defence were fabricated, the witness would ask, “ what time am I to state you were with me ;” and that time would be made correspondent with the other circumstances—the witness would have been tutored to state an hour or time that should not be contradicted and refuted by the known and indisputable fact of the Prisoner’s being in custody at the time he should be said to have parted with the witness. But no such thing is done—no pre-concerted

preconcerted accuracy is resorted to, and you, Gentlemen, can best collect the truth from the evidence which has been given. The difference between the witnesses is, that Lieut. *Brady* states the Prisoner to have been arrested at half past 10 in *Thomas-street*; *Butler* states him to have left *Abbey-street* at half past 10; this amounts to a variance evidently proportioned to the time the Prisoner would occupy in walking from *Abbey-street* to *Thomas-street*—20 minutes would be a large allowance for that purpose; either of the witnesses may easily be mistaken to the amount of 20 minutes, the error may be all on one side, and it is impossible to decide on which; and both parties may be equally mistaken, each to the amount of 10 minutes. I have said thus much upon this subject—upon the place where the Prisoner was found—on the direction in which his face was turned, and the species of light by which the soldier attempted to justify the accuracy of his eye; because taking all these circumstances together, it is impossible but they must raise a doubt in your minds. If the Prisoner came from *Naas* for the purpose of the rebellion, would he occupy his time in the innocent and laudable purpose of engaging a house to carry on his business? It was insinuated that he went to examine the stores—it is but insinuation, which you are to reject as proof. It is moreover flatly contradicted:—*Kearney* says, he never looked at the stores; and much effort was used to confound that witness, as to the time he spent with the Prisoner on that day, and without allowing credit for five miles which they had to walk. It is alleged, that the walking of those five miles probably occupied near two hours of the time—the time spent by *Kearney* in company with the Prisoner on that day, appears to the witnesses recollection to be spent in the several places at which they sojourned, in the proportions in which he has described them; they were in several houses—in several places—a small mistake in each would amount to the time apparently unaccounted for. Here, again, you will recur to what I have already observed, with respect to the periods of time stated on recollection without reference to clocks, watches, or concomitant facts. The hours upon this occasion were not marked by any changes—the witness had nothing to measure the time with when he was at the *Pigeon-house*, nor when he was
at

at *Ringsend*; nor was he at all asked to the time spent in the walk. I have no doubt, that much ingenuity will be exercised to induce you to believe, that no man could be mistaken as to the time beyond a few minutes—I trust the life of my client upon the impossibility of any man being accurate as to time. What is the tenor of *Kearney's* evidence?—He had worked for the Prisoner and knew him well. The Prisoner must have enquired at *Kearney's* house, and was there informed, he worked at *Ringsend*, to which place he proceeds, and discovering that a house was to be let there, which would suit his trade, he employs two days in this speculation, and he would not return home without seeing Mr. *John Kennedy*, whom you all know very well. He is accompanied by *Kearney* as far as *Westmoreland-street*, on his way to Mr. *Kennedy*; then he leaves him. After this, the Prisoner meets another friend, who lived opposite to the gentleman he was in quest of—he is told that he cannot see *Kennedy*, and he is recommended to go home. Is there in all this, any thing which a rational, humane, and considerate mind can doubt, not directly contradicted by the opposite evidence, but with much of the evidence for the Crown, consistent with and supporting it. I will not undervalue your understandings and your hearts so much as to believe it possible but that every thing taken together—the utter impossibility of accurate vision in the soldier—the insignificance of the difference, or inaccuracy in point of time—the consistency of the Prisoner's case with his occupation, and your own recollection, that if the defence were fabricated, and the testimony of *Butler* suborned, it would not be more false, nor more dangerous, to state the time half an hour earlier than he did, and that the Prisoner could best tell how the question of time would apply, and if suborning evidence, would square it accurately to the occasion—I say, taking all these things together, you must entertain doubts upon the case. How are these doubts to be resolved? It is not any thing which I can weakly urge, that can excite doubts—they must arise from the bare statement of the facts. It is not by any thing which the SOLICITOR GENERAL may say, that your doubts will be satisfied—it is not to the superior ingenuity, talents, or understanding of one man, that you will fly to settle such doubts as may arise in your minds, any more than
you

you will suffer a doubt to be created by the plain and blunt reasoning of another. You must look to the Bench, and their Lordships will tell you, that if you have a rational doubt, you are relieved from considering the difficulty and the responsibility of deciding upon your own judgment. The language of the law in such cases is concise and imperative—you must acquit the Prisoner.

The circumstances of character then become material, when there is room for doubt, and the Prisoner has not only shewn a good general character, but a character peculiarly applicable to his defence on this prosecution:—He has shewn, that in the former rebellion in 1798, living, as it were, in the very *focus* of popular frenzy, in the most disturbed and infected spot in Ireland, he was not even suspected. This character will now highly avail him. God forbid it should be otherwise—God forbid, that such of the people of the disaffected parts of this city, of the surrounding country, of that very town from whence the Prisoner came, said to be the fountain of disaffection—that such of those people who have escaped from this infection and have remained peaceable and loyal in the midst of the late dreadful explosion, should not know and feel, that they have not only secured themselves from present danger, but have laid up a fund of merit to which they may resort for safety, if unhappily, they should hereafter be placed in doubtful and suspicious circumstances, that having stood clear of the madness which raged around them, following their ordinary and useful occupations, as this man did—that that alone, and the fair reputation they have thereby acquired, shall strongly avail them, if by fraud, treachery, mistake or accident, they should be accused and deprived, as this man is, by circumstances, and indeed by the very nature of his case, of every other defence. You will tell them this: That every man who has lived by his trade, distinguished by honest conduct and peaceable demeanour, and can establish after this transaction, such a character and reputation in evidence as the Prisoner has done, after a period more troublesome than the late one, as more seducing and likely to draw men into its vortex—that character may obtain a verdict in their favour, which it was possible, without it they might not be able to procure.

Gentlemen,

Gentlemen, upon this ground, that your judgment if not decidedly in his favour, must at least be doubtful, and that acquittal is the legal and necessary consequence of doubt, I do with humble confidence commit to you and to humanity, the fate of the Prisoner.

MR. SOLICITOR GENERAL.

My Lords and Gentlemen of the Jury,

In consequence of the observations which have been made by the counsel for the Prisoner, it becomes necessary that I should submit a few observations to you upon the part of the Crown. You would not have been troubled with any observations from me, but for the speech of the gentleman on the other side. I do not mean to object to the conduct of the counsel of the prisoner in speaking to the evidence, he has discharged his duty with zeal and ability; but I mention it as my excuse for trespassing upon your patience, in a case which otherwise would not require any observations.

Gentlemen, in this case, no questions of law or difficulty in matter of fact arise. The only question for your consideration is, "What part the Prisoner took in the 'insurrection of the 23d of July.'" In order to ascertain that, I will first call your attention to the evidence which has been given upon the part of the Crown, and then to the exculpatory evidence on behalf of the Prisoner.

It appears, that at half past nine o'clock, a party of the army arrived at *Thomas-street*, where they were met by a man, who was plainly a sentinel, advanced at a considerable distance from the main body;—he was seized, and you recollect what his conduct was—he struggled, and made every resistance in his power, but he was overcome, and secured as a Prisoner within the division. The first man thus met with by the army, was armed with the weapon of a rebel, and shewed the determination of himself and his party, to be directly opposite to the duty of the army. One was supporting the government of the country, the other was endeavouring to put it down. The seizure of this man is the signal of attack upon the King's forces;—a bottle was thrown and a shot was fired, by which a soldier was killed. The men of the first divi-

sion were ordered to fire, and after the first volleys, began an independent fire, each soldier firing as he could see an object, or thought he could do service. By the light of this fire, and by the assistance of the lamps, the soldier and the officer distinguished some men with pikes. These men were at the side of the street, and the reason of their being at the side is obvious, it was to avoid the fire of the musquetry which was directed down the centre of the street. Two men were taken in this place; the first was *Roache*, the second *Kearney*. With regard to their guilt, you are to dismiss it altogether from your minds—I mention them only to distinguish them from the Prisoner now at the bar, who is responsible for his own conduct only, and you will determine from the evidence applied to him, how far he was present at the time of this attack for the same purpose, and with the same views as the other persons.

It appears, that this firing thus kept up, and which from its nature spread a continued glare, not sudden like a volley, but constant, the men firing one after another, afforded a sufficient degree of light to distinguish objects. The witness *Watt* was upon the left of the division, next the flag-way, and the Prisoner was upon the flags. The soldier did not observe him till he came close, which is accounted for:—not from want of light, but that the attention of the soldier was directed toward the enemy in front, rather than to the place where the Prisoner was. The Prisoner approached within a yard, when he was called upon to stop;—at the time he was thus called upon he was armed with a pike, which was described as a white pole. Is there any doubt, that the witness could distinguish that weapon clearly, when the firing was going on in front, and lamps were on the same side of the street with the Prisoner? Is it credible or doubtful in the slightest degree, that a soldier could see the weapon under such circumstances. But see how he is fortified by the other witness, *North*:—He heard something fall, the moment the first soldier called out—and a pike is found at the feet of the Prisoner. The first soldier called to the Prisoner, and there being only a short interval of space between them, he stepped out and seized the Prisoner, *North* at the same time heard the pike fall, and there was no other person near the Prisoner who could throw it down.

down. Can you believe that the soldier threw it down? and therefore when the learned counsel insinuates, that some other person threw down the pike, he must mean the soldier, which you cannot believe. *Watt* and *North* both appear to be men of very clear understandings, more capable of ascertaining and describing facts accurately, than usually occurs in their rank of life.

Then with regard to the remainder of the transaction, see what takes place:—The Prisoner is seized and brought into the ranks—if he were that honest and loyal subject, which has been attempted to be shewn by evidence of his character, what would have been his conduct when he saw the King's troops? He would have been delighted at being rescued from the rebels—he would have submitted—he would have incorporated himself with them. Can you believe, that at that moment of danger to every loyal man, when the streets were strewed with their dead bodies, that a person of loyal character and disposition would fly from the soldiers, or resist being brought within their ranks. There is no doubt upon this part of the case, it is proved by irresistible evidence, and it is given up by the counsel for the Prisoner. Force was necessary to restrain him, but why did he resist? His counsel would have you believe, because he got a blow. Why did he get the blow? because one soldier was not able to hold him, the assistance of others was necessary. Was that the conduct of a loyal man? It is impossible that any rational person can form such a supposition—nothing but the treasonable purpose of assisting the insurgents and being one of their body, could have induced him to act as he did.

Thus, is the evidence for the Crown of that kind and character, that you cannot well refuse your assent to it. The veracity of the witnesses is not impeached, and it is only said, that they may be mistaken. But it appears to me that there is no circumstance in the case upon which that allegation can be supported. The two witnesses correspond in their testimony, and all they say is irresistably corroborated by the conduct of the Prisoner himself, in making violent resistance, not only at the moment of his arrest, but long after he was in the custody of the King's forces. Such, Gentlemen, is the case, as resting on the evidence given by the witnesses for the Crown.

Now, Gentlemen, let me call your attention to the kind of case which has been made on the part of the Prisoner. It is not the same which might occur in other cases, namely, that he was surrounded by rebels, and obliged by them to take up a pike. The defence is, that he had no weapon at all; suppose for a moment that he had not, could he have acted as he did, were he a loyal man. The counsel have given up the idea of compulsion, because we could have contradicted it immediately. What then is the Prisoner's account?—He moves all through *Thomas-street*, without danger or embarrassment, although it was then filled with armed rebels—he marches over the bodies of the dead without fear or apprehension, and passes unhurt and unmolested through that mob, which did not permit a single loyal subject that came within its reach, to escape its fury or brutality. Is this a defence that any rational man can attend to? Then see what further is attempted on the part of the Prisoner, and which his counsel represented as an answer to the challenge given by the ATTORNEY GENERAL, as they allege.

The ATTORNEY GENERAL in stating the case, alluded to the defence of compulsion, and said, that the Prisoner should account for what he was doing, and where he was going at the time of his arrest. Accordingly here, two or three witnesses have been produced, whose testimony strengthens the case on the part of the Crown; as it not only shews that the Prisoner was with a party of rebels at the time he was taken, but that he had been for several days before plotting that rebellion, which on the 23d July broke out. Observe the company the Prisoner selected for three days before the rebellion—that *James Kearney*, who was examined for him, was his only companion. I do not ask you to decide upon the character which *Kearney* gave of himself, but upon the character which was given of him by *Butler*, the other witness for the Prisoner, who tells you he remonstrated with the Prisoner for keeping company with such a low, dissipated, idle fellow, and that it was a shame he should be seen with a man so much beneath him. It is fair to say, that a man is often judged of by the company he keeps. It will be for you, Gentlemen, to judge what could have induced such a loyal, industrious, and virtuous man, as the Prisoner is represented by his counsel, to have associated and spent his whole time from

from the *Thursday* preceding the rebellion, with such an idle, dissipated, low and profligate person as *Kearney*.

Now let me call your attention to the transaction of the Prisoner's going to *Ringend* to purchase the house, and from thence to the *Pigeon-house*. He and *Kearney* were employed in that neighbourhood for near three days, and from the facts which have come out, I will venture to say, that there never was any such transaction as a treaty about the house, but that some much more important business took them to the *Pigeon-house*, where a quantity of the King's military stores, and artillery are deposited. The allegation of the Prisoner is, that he wanted to take the house at *Ringend*—he never looks at it, as is customary, to know whether it would suit him. How did he know there was a house to be let at *Ringend*? Does he ever ask for *Kearney* in town?—no such thing; but he goes off to *Ringend*, apparently without knowing that there was a house to be let there. Is that accounted for? No such thing is even attempted. He is informed of the house by his worthy companion. Does he examine it to see what it is, or what alterations it might require? Does he go to *Corcoran*, to whom reference is made for the terms, and who was upon the spot? No such thing—but he goes to the depôt of the King's stores. See then from the cross-examination of *Kearney*, how they spent the day:—They went at two o'clock and returned at nine in the evening; so that allowing ample time for the distance and the time spent with the gunner, there are four hours unaccounted for. How were they occupied for those four hours?—whether in walking to that place, which is stretched by the fancy of the Prisoner's counsel, to a distance of five miles, or in reconnoitering the place, is for your determination. Four days before the rebellion, the Prisoner lived at *Naas*—he came suddenly to *Dublin*. Is he engaged in the line of his business? No; but he goes off to reconnoitre the King's stores at the *Pigeon-house*, and his own witness, the gunner, acknowledges, that an attack was meditated upon that place. See how this idea is corroborated by the conversation with the gunner. The Prisoner enters into no bargain, nor is any thing done towards a bargain, though he remained in town two or three days. Can you believe that a man in his situation of life, not able to afford such a loss of time, and only coming

coming to *Dublin* for three days, (as he was to leave town on *Sunday* morning at six o'clock) would depart without taking any other step in the matter, and leave the whole to his respectable friend, Mr. *Kearney*? It is impossible, to my imagination, that any Jury can readily swallow such a story;—and if you believe, that the prisoner has attempted a fabricated case, it goes to strengthen and confirm the case against him.

But see, whether the subsequent part of his evidence does not tend to put his case in the same point of view—He came from *Naas*:—has he produced a witness to shew the removal of his stock in any article whatever?—Has he brought any witness from *Thomas-street*, where he said he lodged, to shew where he resided on *Tuesday* or *Wednesday*?—Could not a man, upon trial for his life, produce those witnesses—their absence condemns his case—who is it could prove it, if true?—A man intimately connected with him, his brother-in-law, upon whom he could depend—is he produced even to shew that the prisoner was expected at his lodging on *Saturday* night? And therefore the non-production of this witness shews, that the other part of the case is fabricated; and it shews, that his visit to the *Pigeon-house* was for the purpose I have mentioned.

At a quarter past nine, *Kearney* tells you, he and the prisoner separated—Where does he go?—To a baker in *Abbey-street*—he arrives at *Butler's*, and stays with him till half past ten—so that there is no mistake by *Butler* with regard to the time, as alleged by the prisoner's counsel; he and *Kearney* agree and tally exactly; at half past nine, he quits one and arrives with the other; so that the inconsistency which was relied upon to prove there was no confederacy amongst the witnesses, is not founded, because they are perfectly consistent.—But, says Mr. *Ball*, it would be ridiculous to fix upon an hour, when the soldiers, who took the prisoner, could ascertain it.—And why keep back the prisoner from *Thomas-street*?—Because they knew that all the outrages, all the murders of that melancholy night, were committed in *Thomas-street* before ten o'clock—so that upon that account you can reconcile their anxiety for keeping the prisoner out of *Thomas-street* till after ten o'clock. The prisoner produces no companion from *Abbey-street* to
Thomas-

Thomas-street, because there were none there, but such as were implicated in this transaction, and it might not be convenient to them to appear.

It seems, that at half-past ten, as the prisoner asserts, —but earlier, as we contend, the prisoner proceeded to *Thomas-street*.—He might have entered by the Market-house, or by *Dirty-lane*.—If he entered by the Market-house, he must have met the great body of rebels there assembled, armed with pikes.—Could a loyal man pass through them?—It appears, from many melancholy examples, he could not. But suppose he passed through them, how could he proceed so far as *James's-gate*?—His Counsel allege he was without a pike—the answer is, that the want of it would have procured his death.—But suppose he came in by *Dirty-lane*, if he had a fair story to tell, why not account for the remainder of his progress?—No attempt is made to do so—no witness is produced, nor was it even hinted at in statement.—If I say he came up *Dirty-lane*, rebels were there collected and other obstructions, sufficient to caution a loyal man that he could not pass. Then how does he get into the situation in which he was found?—It is impossible he could but as one of the rebel party. In addition to all this, it appears, that the house, to which he alleges he was going, is situate upon the opposite side of the street from the place where he was found. But when I allude to the circumstance of his going to *Gilligan's* house, I must remind you, that the declaration of the prisoner himself is the only evidence in the case to support the assertion.—When a man makes an assertion, which becomes material upon his trial, and has witnesses to prove it, if true, it is not to be regarded unless the witnesses are produced. In this point of view, the non-production of the brother-in-law, his wife, or any of the family, any one of whom might satisfy you of the fact, is conclusive against the prisoner as to this point.—Why not produce them? Is it because they are hostile to him?—No, but because they could not tell truth, consistent with his story.

Gentlemen, I was willing in the outset to leave this case to you, like the former ones, without observation on my part.—It is as free from difficulty as the others. But observations were made with an endeavour to lead your mind

mind from the real object of the case. I have attempted to draw back your attention to the evidence on the part of the Crown.—It is a plain and simple narrative against which there is no objection, and I have gone through the evidence of the prisoner, only to meet the observations of his Counsel.

I have now but one word more to say, which is this: On the part of the Crown it is my duty to call upon you for a discharge of your important duty, with equal justice to the country and the prisoner;—and I concur with the prisoner's Counsel, that where there is a reasonable doubt, the prisoner should have the benefit of it, and you should acquit him. Such a doubt as rational men may entertain under all the circumstances of the case, not an idle speculative conjecture. If you do truly and sincerely doubt of the guilt of the prisoner, in the name of God acquit him. But if, on the other hand, you have no doubt, that you feel the evidence to be irresistible against him, you are bound, under a solemn obligation, to find him guilty. Your humanity has been appealed to—I shall never resist such an appeal.—But you will consider, whether you will shew your humanity more by the acquittal of the prisoner, although you should believe him guilty, or, by his conviction, which, by its example, may tend to save the lives of thousands; by which tranquility may be restored, and the rebellion extinguished.

Mr. BARON DALY.

Gentlemen of the Jury.

The prisoner at the bar stands indicted for High Treason, in compassing and imagining the death of the King, and also in levying and making war, insurrection, and rebellion against the King and his Government.—The overt acts stated in support of these treasons are the same, namely, that the prisoner, on the night of the 23d day of *July* last, was armed with a pike, aiding and supporting the rebellious insurrection which took place upon that night, and that he did levy war and rebellion.

Gentlemen, there are two questions for you to consider:—First, Whether any rebellion of the nature mentioned in the indictment took place on the night of the

23d of July last. Secondly, if there did—What part the prisoner took in that rebellion?—With regard to the first question, I shall trouble you with a very few words, because the whole tenor of the evidence on the part of the prosecution proves, and the line of defence which has been taken by the prisoner's Counsel, admits, that such a rebellion did take place upon that night; so that, whether you look to the evidence of Mr. *Wilson*, who proves the numbers he saw in *Thomas-street*, unarmed—the way by which they proceeded to the dépôt, and their coming out armed from that place. Whether you look to the evidence of Mr. *Coultsman*, as to the contents of that dépôt, namely, hand-grenades, powder and ball cartridge; to an immense extent, pikes, materials for conflagration, proclamations expressive of rebellion, flags and colours and military uniforms—Whether you look to all these, or to the line of defence taken by the prisoner, no doubt can remain in your minds, but that a rebellious insurrection took place upon that occasion.—It is the duty of a Jury to weigh the evidence, where a party denies a fact, and evidence meets evidence: but where the fact is admitted, the Jury can have no difficulty.

Therefore, gentlemen, I shall only trouble you with the evidence which relates directly to the prisoner at the bar.—The first witness examined was Lieut. *Brady*.

(Here the learned Judge recapitulated the evidence as given by the several witnesses, and observed:)

If you, gentlemen, believe the witnesses, the prisoner had a pike in his hand.—When he was seized, he made violent resistance.—If he were not engaged in the rebellion, his conduct, in my apprehension, would have been of a different nature.—If he were an innocent man, he would have rejoiced at meeting with the soldiers—he would have felt that his greatest danger was his being unprotected, and that the only protection he could then wish for, was from the King's officer.—But what was his conduct, if you believe the evidence?—A continued struggle from the time he was taken, till he was brought to the Commander of the forces.

A great deal of fire-arms seems to have been laid by the Counsel for the prisoner, upon the manner in which he was going, when he was taken up. It was argued, that

if he wished to escape, he would have gone the opposite direction from that which he went. But it is for you to consider, whether it was not easier for him to effect his escape, by going in the direction in which he went, than the opposite direction, at the time of the fire of the troops. They fired down the street, and the prisoner was going fast from the first division to the rear division, which was in a direction in which he could not be injured by the fire, and he would have escaped altogether had he passed the rear division.

Gentlemen, the defence set up is of a peculiar nature: — not so much contradicting, or controverting directly the facts which have been proved, as a defence by way of inference, from which you are called upon, if you believe it, to pronounce him an innocent man.

It appears, that the prisoner is an inhabitant of *Namur*, a town situate fifteen miles from the city of *Dublin*, and it certainly was incumbent upon the prisoner, not being an inhabitant of *Dublin*, being found in such a place, and upon such an occasion, to shew why he was in this city at that time. — His defence is offered to shew, that he was in the city upon an innocent occasion.

(Here the learned Judge stated all the evidence given by the witnesses examined for the prisoner, and expressed his opinion, that the testimony of Mr. Courtney, who was examined to contradict one of those witnesses, ought to be put out of the case, as not being very clear upon the identity of the man.)

He then proceeded:

It is my duty, gentlemen, to make a few observations upon the evidence. — With regard to the hour, at which the prisoner (if you believe his witnesses) was in *Abbey Street*, it differs from the time stated by the witnesses for the prosecution. If you believe the testimony of *Lieut. Brady*, the prisoner was in *Thomas Street* at a much earlier hour, than he could have been, if the witnesses on his part swear true. It is for you to judge with regard to that contradiction; and if you should believe the witnesses for the Crown as to the hour, the conclusion which would naturally follow, but which is for your determination, is, that the defence is fabricated.

The

The material fact to ascertain is, whether the prisoner was found in *Thomas-street*, armed with a pike against the King's troops?—That he was there is not disputed—that he struggled is not disputed—and the only circumstance upon which a shade of doubt is cast, is, whether he had a pike?—That is not contradicted by direct evidence; nor could it from the nature of the case. But it is controverted by inference—by shewing, that he came from *Naas* with an innocent intention, and therefore was not likely to have a pike. There is one thing remarkable however, that though he said, he resided for the occasion in *Thomas-street*, there is no evidence that he did reside there. He himself said, that he lodged at *Gilligan's*, in *Thomas-street*, but there is no evidence of the fact; and the only evidence of his being in *Thomas-street* at all, goes to shew, that he was there at the time the King's troops were engaged with the rebels.

With regard to the innocence of his design in coming to town, there is evidence, that he was agreeing about a house; but no serious act appears to have been done towards an agreement.—There was no money paid—no terms stipulated—nothing to bind the bargain; or to shew it was concluded upon. This house, which he asserts he wanted to take, lay in the way to a place, where there is a great depôt of arms and ammunition. The prisoner and *Kearney* went to that place for the alleged, or the real purpose, of taking a house, and it appears they were some time there;—how long does not appear, but they were in that place where this depôt of arms and ammunition was, and that a few days before the insurrection took place.

It also appears, that the object of the prisoner being, as the witnesses for him say, to take that house, having gone there three times for that alleged purpose, no evidence is adduced to shew, that he ever examined the house, or went into it. However, gentlemen, if you can believe from that kind of evidence, that the intention of the prisoner in coming from *Naas* to *Dublin*, was with the innocent intention of taking that house, or any other;—that he went to the *Pigeon-house* with a sincere intention of making a bargain. If you believe, from his own assertion, that he lodged in *Thomas-street*, and that he was in *Abbey-street* at the time his witnesses say, and notwithstanding

notwithstanding what the witnesses for the Crown say, that he innocently went to *Thomas-street*, and was standing innocently there during the action—or if you have any reasonable doubt of that, you ought to acquit the prisoner.—But in doing so, you must reject the testimony of the soldier, and many circumstances that flow from the evidence of the prisoner.—But again I say, if you entertain a doubt, you should acquit him.—But it is my duty to tell you, that the doubt should be the doubt of reasonable men, after giving due consideration to the evidence. If after giving such weight to the evidence as you think it deserves, you entertain a doubt upon the case, you should acquit. But if, on the other hand, you believe the evidence for the crown, it is your bounden duty, to give that verdict which the Crown and the public, in such a case, have a right to demand—a verdict of conviction.

I have now a few observations to make with respect to the evidence of character.

Mr. MAC NALLY. My Lord, will you excuse me.—There were some witnesses called, who did not answer.—I understand, they are now in Court.—Perhaps your Lordship would wish they were examined before you conclude.

Mr. BARON DALY. By all means——call them.

John Kennedy, examined by Mr. MAC NALLY.

Q. Where do you live?

A. In *Abbey-street*.

Q. What business have you carried on this some time past?

A. Biscuit baking.

Q. You have contracts from Government?

A. I have.

Q. Do you know the prisoner?

A. I do.

Q. How long?

A. These ten years.

Q. Where did he live?

A. Opposite to my house.

Q. Where

Q. Where did he live the last six years?

A. I heard he lived in *George's-street*, and some time in *Naas*.

Q. Have you heard his general character?

A. I had no occasion to enquire into his character.

Q. Have you heard his character for loyalty impeached?

A. No.

Q. Was he a quiet man?

A. He was a quiet man, when he lived in my neighbourhood.

Not cross-examined.

James Dodd, examined by Mr. BALL.

Q. Where do you live?

A. In *Naas*.—I have a public-house, and the mail-coach office these ten years.

Q. Was *Naas* much disturbed in the year 1798?

A. It was.

Q. Do you know where the prisoner lived?

A. In *Naas*, opposite to *M^r Donnell's* inn.

Q. How long?

A. Four years.

Q. Are you acquainted with his general character?

A. I never heard much of him.—I heard he was a peaceable, quiet man.

Q. Have you ever heard him impeached as a disloyal man?

A. I have not.

Not cross-examined.

Luke Duff, examined by Mr. MAC NALLY.

Q. You live in *Marlborough-street*?

A. I did.

Q. Where now?

A. In *Earl-street*.

Q. Do you know the prisoner?

A. I do.

Q. How long?

A. Ten or twelve years.

Q. During

Q. During your knowledge of him, have you ever heard his character impeached for disloyalty or sedition ?

A. I have not.

Q. By the Court. Do you know any thing of him during the last four years ?

A. No, I do not.

Not cross-examined.

(After those witnesses.)

Mr. BARON DALY.

Gentlemen, with regard to character in cases of this kind, I shall observe, that the kind of character which you are most called upon to consider, would be a character of loyalty. I do not mean negative character; but express character of loyalty; and if such character appeared, and you had any doubt in the case, and you believed the Prisoner was a loyal man, it should weigh much with you. But the evidence offered is not such. In my opinion it is admissible evidence, but it must diminish much in its weight, when it is not only negative in respect of loyalty, but goes only to a peaceable demeanor, and that at a period remote from the time of the accusation. Therefore, the evidence offered is not of the same force with evidence of active loyalty. However, if from what you have heard, you believe that the Prisoner is an actual loyalist, and that you have a doubt upon the case, you will acquit him.

The Jury retired, and in five minutes returned a verdict ---Guilty.

The Prisoner was remanded.

On Saturday, the 3d of September, he was brought up for judgment. The indictment was read, and he was asked what he had to say, why judgment of death and execution should not be awarded against him.

He did not make any answer. And,

Mr. BARON DALY proceeded to pronounce the sentence. He observed upon the crime of which the Prisoner was convicted---that upon embarking in a treasonable conspiracy, he departed from the former habits of his life, in-
dolence,

dolence, idleness, and dissipation, and suddenly became active and zealous, in the vain expectation of establishing "a free and independent republic," when every disorder might be committed, every excess indulged, and every principle of justice, religion, and humanity violated. The verdict of the Jury had established, that the treaty for the house in *Ringend*, was a mere pretext, and it did not appear that one effectual step was taken towards a completion of the contract. In answer to the allegation that he lived in *Thomas-street*, the only evidence to which the Jury could attend of his having been there, was, that he was there in arms, opposed to the King's forces. The object of the conspiracy, in which the Prisoner embarked, was defeated, and instead of the pillage and massacre which was expected, the Prisoner was brought to the bar of justice. Whatever his individual motive might have been, the learned Judge reminded him, it must have been disappointed; and if amidst his crimes, he had preserved any principle of religion, it was full time to rouse them into action. It was incumbent upon him to be reconciled to the searcher of all hearts, which could only be effected by sincere repentance, preliminary to which, a full disclosure of his crimes was essential—and infinite as was the mercy of God, he would not receive a sinner, who uttered falsehood in the last moment of his existence in this world. The learned Judge then pronounced the sentence in the usual form.

Prisoner. I am as innocent as the child unborn. I leave it to my God, I never saw a pike in my life.

He was executed the following day in *Townsend-street*.

Counsel for the Crown.
Same as in the former
Trials.

Crown Solicitors,
T. and W. KEMMIS.

Counsel for the Prisoner.

Mr. MAC NALLY,
Mr. C. BALL.

Agent,
Mr. L. MAC NALLY.

A

R E P O R T

OF THE

PROCEEDINGS

IN

Cases of High Treason.

SPECIAL COMMISSION.

Saturday, September 3d, 1803.

Judges present, Lord NORBURY, Mr. Justice FINUCANE,
Mr. Baron GEORGE, Mr. Baron DALY.

John Begg was put to the bar.—He had been arraigned on *Wednesday*, the 31st of *August*, upon the following indictment:

County of the City of } **T**HE Jurors for our Lord the
Dublin, to wit. } King, upon their oath pre-
sent, that *John Begg*, late of *Bonham-street*, in the city and
county of the city of *Dublin*, yeoman, a subject of our said
Lord the now King, not having the fear of God in his
heart, nor weighing the duty of his allegiance, but being
moved and seduced by the instigation of the Devil, as a
false traitor against our said Lord the now King, his supreme,
true, lawful and undoubted Lord, the cordial love, and true
and due obedience, which every true and dutiful subject of

our said Sovereign Lord the King, towards him our said Lord the King should bear, wholly withdrawing, and contriving and intending the peace and common tranquillity of this realm, to disquiet, molest and disturb, and the Government and Constitution of this realm to change, subvert and alter, and our said Lord the King, from the royal state, honor, power, imperial crown and government of this Kingdom to depose and deprive, and our said Lord the present King to death and final destruction to bring and put, he the said *John Begg*, on the twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, at *Bonham-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, wickedly and traitorously did compass, imagine and intend our said Lord the King, then and there his supreme, true and lawful Lord, off and from the royal state, crown, title, power and government of this realm to depose, and wholly deprive, and our said Lord the King to kill and bring and put to death. And that to fulfil, perfect, and bring to effect, his most evil and wicked treason, and treasonable imaginations and compassings aforesaid, he the said *John Begg*, as such false traitor as aforesaid, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, at *Bonham-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, maliciously and traitorously did conspire, confederate, and agree to, and with divers other false traitors, whose names are to the Jurors aforesaid unknown, to raise, levy and make a public and cruel insurrection, rebellion and war, against our said Sovereign Lord the King, within this Kingdom.

And afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Bonham-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *John Begg*, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes aforesaid, did arm himself with, and did bear and carry a certain weapon, called a pike, with intent to associate himself with divers other false traitors, armed with guns, swords and pikes, whose names are to the said Jurors unknown, for the purpose of raising, levying and making insurrection, rebellion and war, against our said Lord the King, and of committing and perpetrating a cruel slaughter of,

of, and amongst the faithful subjects of our said Lord the King.

And that afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Bonham-street* afore said, in the city and county of the city of *Dublin* afore said, the said *John Begg*, as such false traitor as afore said, in further prosecution of his treason, and treasonable purposes afore said, with a great multitude of persons, whose names are to the said Jurors unknown, to wit, to the number of 100 persons and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords, and pikes, being then and there unlawfully, and traitorously assembled and gathered against our said Lord the King did prepare, levy, ordain and make public war against our said Lord the King, against the duty of the allegiance of him, the said *John Begg*, against the peace of our said Lord the King, his Crown and dignity and contrary to the form of the statute in such case made and provided.

And the said Jurors of our said Lord the King, upon their oath do further present, that the said *John Begg*, being a subject of our said Lord the now King, and not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the Devil and entirely withdrawing the love, and true and due obedience which every subject of our said Lord the King should, and of right ought to bear towards our said sovereign Lord the King, and wickedly devising and intending to disturb the peace and public tranquillity of this kingdom, on the 23d day of *July*, in the forty-third year of the reign of our said Lord the King, with force and arms at *Bonham-street*, in the city and county of the city of *Dublin* afore said, unlawfully, maliciously, and traitorously did compass, imagine, and intend to raise and levy war, insurrection and rebellion against our said Lord the King within this kingdom, and in order to perfect, fulfil, and bring to effect the said traitorous compassing, imaginations and intentions last mentioned of him the said *John Begg*, he the said *John Begg*, afterwards, to wit, on the said 23d day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Bonham-street* afore said, in the city and county of the city of *Dublin* afore said, with

a great multitude of persons, whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with swords, guns, and pikes, being then and there unlawfully, maliciously, and traitorously assembled and gathered together against our said Lord the now King, most wickedly, maliciously and traitorously did ordain, prepare, levy and make public war against our said Lord the King, his supreme and undoubted Lord, contray to the duty of the allegiance of him the said *John Begg*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded *Not Guilty*, and being this day asked, whether he was ready for his Trial, he answered he was.—The Pannel was then called over, and being put to his challenges, the following Jury was sworn :

Peter Wilkinson,	Francis T. Brady,
Henry Bingham,	George Gibson,
James Nugent,	Thomas Jackson,
Robert Smith,	John Raper,
Richard Litton,	George Rafferty,
William Bond,	John Orr.

The Prisoner was given in charge.

Mr. O'Grady opened the indictment.

MR. ATTORNEY GENERAL,

My Lord, and Gentlemen of the Jury—

We shall shortly submit to your consideration such evidence, as we trust will be sufficient to satisfy your minds, that a rebellious and traitorous insurrection existed in this city upon the 23d day of *July* last, and then it will be your duty, Gentlemen, to attend with every possible degree of diligence, to the evidence which will be adduced to shew, how far the Prisoner was connected with that insurrection. He is a resident of *Dublin*, and a carpenter by trade, and though he belongs to a description of persons who must have been particularly active in the rebellion, you ought to discharge that circumstance from your minds, because though many of his trade must have been guilty, yet that

is

is matter of general inference, and should not bear against the Prisoner upon this trial.

Gentlemen, where the rebels were collected in a body, though many of them suffered by a well directed fire from the military, yet few were apprehended, those who were taken were, for the most part detached as outposts, for the purpose of apprizing the main body of the approach of the military upon them. It will appear that there is a lane at right angles with *Marshalsea-Lane*, in which there was a considerable quantity of arms and amunition collected. Various devices were resorted to for the purpose of protecting this place from attack; there is a street running parallel with the lane, called *Bonham-Street*, from which there is also a passage to that lane. The Prisoner at the bar, standing centinel at *Bonham-street*, was discovered at no great distance from the frame of timber, which you will hear described, and which was prepared for the purpose of being filled with powder, and exploding, so as to annoy any force which might advance. A soldier of the 9th regiment, who first perceived the prisoner, said, "There is a man with a pike," and upon hearing the exclamation, the Prisoner fled into a timber-yard—he was pursued and arrested in a situation in which he endeavoured to conceal himself. If these facts shall be clearly established by evidence, there can be no doubt but the Prisoner was armed with a pike for the purpose of aiding those who were engaged in the conspiracy. If he took up the pike with that intention, he is guilty of the crime charged against him.

EDWARD WILSON, *Esq.* Examined.

(Gave the same account as upon the first trial. *Vide* No. I. Page 37, *Kearney's Case*.)

Not Cross-Examined.

WHEELER COULTMAN, *Esq.* Examined by Mr. TOWNSEND.

Q. Do you remember the night of the 23d of July last?

A. I do.

Q. Had

Q. Had you any party with you that night ?

A. I had about twenty-eight men.

Q. To what place did you proceed ?

A. To the left of *Bonham-street*, where a box of ball cartridge had been found.—I saw eight pikes there.

Q. Was that near the place where the depot of ammunition was afterwards found ?

A. It was.

Q. Mention what you saw ?

A. I saw an obstruction across *Bonham-street*, which is parallel with *Marshall's-lane*; *Bonham-street* is separated from that lane by three timber yards, and one dairy yard. There was another obstruction across the lower end of *Dirty-lane*, they were formed of hollow beams of timber placed upon cars without wheels.

Q. Were they obstructions even without exploding ?

A. They were.

Q. Would they obstruct the progress of any force that advanced from *Usher's-island* ?

A. They would.

Q. Look at the prisoner at the bar—did you see him ?

A. I did.

Q. Where and when ?

A. I saw him in a timber yard in *Bonham-street*.

Q. Do you mean one of those timber yards you mentioned between *Bonham-street* and *Marshall's-lane* ?

A. I do; it was in the timber yard next *Bonham-street*.

Q. Had he any arms ?

A. Not that I saw.—It was a quarter past twelve at the time; a private of the 9th, mounted upon the wall and said, "here is a rebel with a pike;" I handed him a pistol, and desired him to jump down, and not let the man hurt him, but to open the gate; I then got into the yard, and saw the prisoner dragged from under some fresh timber,—the roots of trees I believe; there was little more than his legs seen, and by them he was dragged out; I seized and tied him, and gave him to a party of the 38th regiment.

Q. Was he in a place convenient for watching the depot ?

A. I cannot say it was.

Q. Was any person with him ?

A. No; and I saw but one pike there, within a yard of where the prisoner lay.

Q. How

Q. How far was this yard from the beam of timber which you said was across *Bonham-street*?

A. About 20 yards, not reckoning the space over the wall.

Q. Was it easy to get over the wall?

A. It was; for there was a quantity of pipe timber raised against the wall upon which we climbed.

Q. If it were necessary to set off the machine, must there not have been some person near it?

A. Certainly, with a rocket, or a match, to let it off.

This witness was next examined respecting the contents of the depot, and gave the same account as before. *Vide* No. I. Page 48, *Kearney's Case*. He stated, that a number of flints were found of remarkably good manufacture, and of a whiter colour than those made in this country.

Cross-Examined by Mr. M'NALLY.

Q. Was the machine which you saw, loaded?

A. I cannot say; I did not see any powder in it.

Q. If it were not loaded, it would not be necessary for a man to be standing there to let it off.

A. No; that is very clear.

Q. The night was very dark?

A. Not at that time; it was turned of twelve, and was so light, that upon approaching *Queen's-bridge*, I could see three horsemen, and upon challenging them, they answered, "Friends," but not stopping, as I bid them, I desired some of the men to fire.

Q. You could not see their faces?

A. No; nor whether they were soldiers or not; but upon desiring them to stop, they turned down the quay.

Q. You could not distinguish a man's face?

A. No; not at that distance.

Q. How did the night advance, was it lighter or darker after ten o'clock?

A. It grew lighter, it was very dark at ten o'clock.

Q. *By the Court.* Did the prisoner say any thing by way of excuse?

A. I asked him, "what brought him there," he said, "he ran away to avoid the pikemen."

Q. He

Q. He told you he ran away from a number of pikemen?

A. He did.

Q. From all you saw—from the instruments of destruction across the street, and the depot of arms, do you not believe there were a great number of pikemen there?

A. I do believe it, because Col. *Browne* had been killed there that evening.

Q. Then an individual could have no chance in staying there as a protector of such a depot, or in resisting the King's forces?

A. I am not competent to answer, whether he was there individually by himself, because when the box of cartridge was taken, there were no pikemen there; but when we returned, there were eight pikes found, so that there must have been some there who had dispersed.

Q. *By the Jury.* Did you ask the prisoner where he lived?

A. I did; he said, he lodged in *Dirty-lane*, and had been to a taylor's for a pair of small clothes, as I recollect.

Serjeant THOMAS RICE, Examined by Mr. MAYNE.

Q. Were you with Lieutenant *COULTMAN* upon the 23d of *July* last?

A. I was under his command.

Q. Were you in *Bonham-street*?

A. I was.

Q. Was any prisoner taken there?

A. There was one taken out of a timber yard.

Q. Who was that person?

A. The prisoner at the bar; I know him very well.

Q. What did you first see of him?

A. I found him under some timber.

Q. Was he concealed?

A. He was; I could only see his legs and feet.

Q. How far was this from the street?

A. Within ten or a dozen yards from the gate.

Q. Was the gate near the street.

A. It was next the street.

Q. Was any weapon found there?

A. I believe there was, but I cannot say positively;
when

when taken out from under the timber he had nothing in his hand.

Q. What hour was it?

A. Between twelve and one.

Q. Are you sure he is the man who was taken?

A. I am.

The witness then proved the proclamation found in the depot.

Cross-Examined by Mr. BALL.

Q. You had been in *Bonham-street* some time before in the course of that night?

A. I had.

Q. About what hour?

A. Between twelve and one.

Q. But I ask you were you there before that time?

A. I was about half an hour before that.

Q. It had been rather a dark night?

A. It was.

Q. I believe it was so dark, that it has appeared from a respectable witness, that it was not possible to see beyond a yard.

A. It was lighter after twelve.

Q. You saw a great number of pikes against the wall, and in the streets?

A. I did.

Q. The rebels appear to have expected much greater numbers than joined them?

A. I believe so.

Q. But they seduced many to join them who knew nothing of the conspiracy?

A. I cannot say as to that, it was understood there were many to join them.

Q. They were rather looking for men than pikes?

A. I cannot say.

Q. There are three timber yards in *Bonham-street*?

A. This yard is on the left hand side, leading from *Dirty-lane*.

Q. The depot was found in the lane which crosses from *Dirty-lane* to *Marshall's-lane*?

A. Yes.

Q. Then there is a considerable space between the depot and the place where the prisoner was found?

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A. There

- A. There is some.
Q. The depot is on the left hand of the lane?
A. It is.
Q. Then there is the space of several timber yards from *Bonham-street* to that lane.
A. There is.

JOHN GALLAGHER Examined by Mr. SOLICITOR GENERAL.

- Q. Do you remember the night of the 23d of July?
A. I do very well.
Q. Do you know the prisoner?
A. He is there. (*Pointing to him.*)
Q. Did you see him upon that night?
A. I did.
Q. Where did you first see him?
A. I first saw him running up *Bonham-street*.
Q. From what part?
A. From near *Dirty-lane*.
Q. How near were you to him when you first saw him?
A. I was in the front of the party, within ten yards of him.
Q. How many were of the party?
A. There were three of the 9th, eleven of the Barrack division, and some others.
Q. How were your party dressed?
A. They had all coloured clothes except the soldiers.
Q. You had scarlet clothes?
A. Yes.
Q. The prisoner ran off, you say?
A. He did.
Q. How did he get off.
A. He mounted on large beams of timber which were next the yard gate.
Q. And what did he do then?
A. He jumped over the wall.
Q. Had he any arms at that time?
A. He was armed with a pike.
Q. Did you pursue him?
A. Over the wall straight, and when I was upon the wall, some of the party desired me not to go down, I said I would go, if I was killed it would be the first time; I called out to my officer, and said there was the man there,

there---he immediately dropped his pike, and he sunk under some timber. I jumped down with my bayonet, and threw the pike over the wall, lest some mischief might be done, and I called for a hatchet which the party had, and I broke open the gate.---The serjeant came, and I said, the man sunk there, and I desired the serjeant to take him out.

Q. Was there any other person there?

A. No, there was not.

Q. Was there any other pike?

A. There was not.

Q. Are you sure he is the person you saw in Bonham-street?

A. I would be very sorry to come here with a lie in my mouth.---He had a grey coat on, and a ticken pralken before him.

Q. Are you sure he is the person?

A. I am.

Cross-examined by Mr. MAC NALLY:

Q. The party was in coloured clothes?

A. Many of them were; but they had cross-belts.---I was in front, and my officer followed with a flambeaux.

Q. What arms had you?

A. I had no musquet, but I had this bayonet.

Q. There was a blunderbuss among the party?

A. There was.

Q. There was a hatchet?

A. There was.

Q. Your officer had a sword and pistols?

A. He had.

Q. You knew that?

A. I did, because I brought them up to his room.

Q. That is a very good reason for knowing it.---Were you here during the former trials?

A. I was, but I was not called till now.

Q. Did you hear that a man headed the party, with a scarlet jacket?

A. I did not hear any thing about it.

Q. Did you see any of the rebels that night?

A. I saw some of them, when they were going to kill me.

Q. Were they in coloured clothes?

A. They were.

Q. You made from them?

A. I did

A. I did, being by myself.

Q. They were in coloured clothes?

A. They were.

Q. And armed with pikes?

A. Yes.

Q. Now, if you had met a party in coloured clothes, one carrying a blunderbuss, and another a hatchet, would you not run from them as rebels?

A. I knew them all to be good soldiers?

Q. But if you did not know them, might you not mistake them for rebels?

A. If they were armed with pikes, I would know them to be rebels.

Q. Might you not mistake Captain *McCabe* for a loyal man?

A. It would be very odd, being ten years in the army, if I would not know the difference between a rebel's head and a soldier's.

Q. Suppose you met recruits, would you know them to be soldiers?

A. I do not reckon them soldiers till they are disciplined.

Q. You took this man with your bayonet?

A. No, I desired the serjeant to take him.

Q. He was near being killed afterwards?

A. He was: but I said he might be a good watchman, that he had good guts, and could give information, otherwise he would have been killed.

Q. But if you were single, would you not take him with your bayonet?

A. I would if I could, before I would let him kill me; but he had not the courage of a soldier, or he might kill me as I mounted the wall by myself.

Q. You said you threw the pike over the wall?

A. I did, certainly.

Q. Then there was no pike in the yard?

A. There was no pike when I threw it from the yard---he dropped it in the yard, when I called out, "he was there"---he sunk under the timber, and I let the officer in.

Q. You threw the pike into the street?

A. I did, and afterwards opened the gate.

Q. When you went in, you did not know but there might be more men than one, and therefore you threw the pike over the wall?

A. For

A. For fear of mischief I did:---for fear there might be more there to sacrifice me while I was opening the gate:---then from that he was taken and given to the guard in the lane; we then went to *Marshall's lane*; some said there were loads there and I went there; the party came as hard as they could lick, and I saw a great quantity of pikes; I mounted the pikes and got into the stores.

Q. Why did you not fire at the rebel as you supposed the Prisoner to be, when you saw him in the yard?

A. Because I had no pistol; my officer gave me one afterwards.

Q. *By the Court.* Be accurate as to the time when you threw the pike over the wall; did you throw the identical pike which you saw the man drop?

A. The very pike.

Q. Before you opened the gate?

A. Yes.

Q. Was there any other there?

A. Not that I saw.

Q. Did you wait to see the pike thrown down?

A. I did.

Q. Was any search made for any other man?

A. I cannot say.

Q. Was any of the party with you in the yard at the time you threw the pike over the wall?

A. No one but myself.

Examined again on behalf of the prosecution.

Q. After the gate was opened how many of your party came in?

A. That is hard to say; a man in such a flutter as I to count heads at that time!

Q. But some of them came in?

A. They did; but the serjeant was the first.

Q. What became of the pike?

A. It was given to a party of the 38th, after the Prisoner was given up.

The Witness was desired to withdraw, and LIEUT. COULTMAN was called again and examined by the COURT.

Q. You have been present when the last man was examined?

A. I was,

A. I was, my Lord.

Q. In your direct examination you said you found a pike, and but one within the yard, when the Prisoner was dragged from under the timber?

A. I have.

Q. You heard the last witness say, the pike was let fall by the Prisoner, and thrown over the wall by him, the witness, before he opened the gate; of course it must of necessity follow, that it was not the pike which you got in the yard?

A. I could not answer for that; I say I got a pike in the yard near where the man lay.

Q. Do you recollect a pike being thrown over the wall?

A. I do not; there was a gentleman with me who may recollect better.

Q. When the Prisoner was taken, what conversation passed respecting the pike?

A. I asked him what brought him there? he said he ran away from a number of pikemen. I asked him why he was out so late? he said he had been at a tailor's.

Q. Did you say any thing about the pike?

A. I asked him about his pike; he said he knew nothing of it.

Q. *By the Jury.* You said you gave the soldier a pistol?

A. I say so still; I gave him a pistol when I mounted the wall.

Q. *By the Prisoner's Counsel.* The Prisoner told you he lived in *Dirty-lane*; did he say where the tailor lived?

A. I do not recollect.

Q. Did he not point out the very house where the tailor lived?

A. I rather believe he did; it was opposite the timber yard.

Q. Do you recollect whether he told you what his occupation was?

A. He said he was a carpenter.

Q. Did he tell you where he lived?

A. I do not recollect; he told me where he lodged; but I do not recollect the house.

Q. Did

Q. Did he tell you in what part of *Dirty-lane* he lodged?

A. I cannot say he did; but he told me the name of the owner of the house.

Q. Do you recollect the name?

A. I do not.

Q. Did you go to the tailor's place?

A. I did not.

Q. You had some people with you?

A. I had; and a party come up with *Major Gordon*, and I gave the Prisoner to him, and that was the reason I did not go to examine his place.

Q. *By the Jury.* What did the soldier say when he got upon the timber?

A. He said, "here is a man with a pike in his hand."

Q. Was it then, or after his going over, that you gave him the pistol?

A. He was upon the timber, looking over the wall, and I drew my pistol from my belt and gave it to him; for we desired him not to go over the wall without it.

JOHN GALLAGHER, *called again.*

Examined by Mr. ATTORNEY GENERAL.

Q. Did you get any weapon from your officer upon the night of the 23d of July?

A. I did, a pistol when I was mounting the stores.

Q. Did he give you a pistol when you were mounting the wall of the yard, where the Prisoner was?

A. No, but in *Marshal-lane*, after we went from the timber yard.

Q. *By the Court.* What did you say when you looked into the yard where the Prisoner was?

A. I said, "here is a rebel with a pike in his hand;" and he then dropped the pike and sunk under the timber.

Extracts from the Proclamation were here read.

Vide No. I. Page 54. Kearney's case.

Case closed on behalf of the prosecution.

Mr.

MR. MAC NALLY,

My Lords and Gentlemen of the Jury—

The court having done me the honor, to assign me as one of the counsel to the man now upon his trial, for the purpose of advising him in his plea, and assisting him in his defence, I have to claim your patient attention in his behalf. The duty is arduous, and to a feeling mind, must be accompanied with great anxiety indeed. My client's defence depends in a great measure upon the evidence which has been brought before you by the *Attorney General*, and on this evidence I shall concisely observe.

MR. BARON GEORGE—Mr. *Mac Nally*, were you present the last day, when the court expressed their opinion as to the propriety of counsel reserving observations upon the evidence for the close of the trial?

MR. MAC NALLY—May I presume, my Lords, to enquire, does the court mean to restrict me in stating the case of my client, from observing on the evidence produced in support of the indictment, and from pointing out the contradictions of the witnesses, and their deficiency in point of credit, if such observations can be justly made?

MR. BARON GEORGE—You are now to state the case of your client, without observation on the evidence.

MR. MAC NALLY—That rule having been intimated on a former day, I have looked into several of the *English* trials, and I find that ever since the privilege of praying counsel by the prisoner, and the assigning counsel by the court, has been provided for by the statute, both the counsel assigned have observed upon the evidence produced by the crown. I do, with great humility and respect to the court, submit, that it is the prisoner's right to call upon his counsel to do so. In the last case of treason tried in *England*, and in those cases previously tried in 1794, it was the uniform practice. On the trial of *Thomas Hardy*, his leading counsel, Mr. *Erskine*, not only stated the case of the defendant, but scrutinized and observed upon the evidence, and in commencing his argument, he asserts his right of considering the cause of his client, both as it regards the evidence and the law.

Mr.

Mr. *Gibbs*, his coadjutor, in that great cause, not only laid down what he considered the law, and his own opinion thereon, but the charge against the prisoner, and his own observations resulting therefrom, but also his observations on the evidence given on the part of the prosecution, and in support of the defence, comparing the one with the other, and drawing his own conclusions in favour of his client.

MR. BARON GEORGE—You are now to tell us the case of the prisoner, and afterwards the evidence will be remarked upon by counsel on each side.—We have made the rule.

MR. MAC NALLY—That being your lordships' opinion, I must submit. It would be ineffectual, perhaps it would be considered presumptuous, to contend with what your lordships have now made a rule of the court.—And I shall therefore, as far as possible, shew it obedience, and leave the task of observing upon the evidence to my learned friend, whose ability, I am free to admit, is more competent to it than mine.

Gentlemen of the Jury, I have been assigned counsel for the prisoner, by the court, at his special request, he being entitled to the aid of two counsel by law; but, narrowed as I am in the exercise of my duty, by the coercive rule which the court has been pleased to lay down, I would rather sit silent, and leave the whole case to the exertions of my friend, if by so doing it might not give uneasiness to my client, and appear like a dereliction of my professional duty, than address you, as I stand circumstanced.

I have to hope that your minds will not be swayed by any incidents of the late disturbances, by any thing you may have heard spread abroad through the medium of public report, or the insidious whisper of private insinuation. All communications out of this court or in this court, except by evidence on the oaths of credible witnesses, should pass by your recollection without impression, like the idle breath of babbling falsehood. You will attend to nothing but the investigation of truth founded on legal proof. It would be absurd to controvert the existence of an insurrection: that there has been a conspiracy and a rebellion in the metropolis, has been made plain to you

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from evidence unquestionable, and therefore I shall not consume your time on that part of the case. The rule laid down by the court does not, I trust, preclude me from saying, that when you come to consider the issue which you are sworn well and truly to try, you will divest your minds of all the facts constituting that rebellion as matters not at all attachable to the prisoner, and reserve only in your recollection the general conclusion, that a rebellion did exist on the 23d of *July* last.

Gentlemen, unless there did exist a conspiracy to dethrone the King, or to perpetrate some other fact whereby his life might eventually be in danger, the prisoner could not be indicted for compassing and imagining his Majesty's death. I say also, unless there existed such an insurrection as has been described, or other arming of the people, or opposition to those deriving authority from the crown, the prisoner could not be tried for levying war.

You have heard the overt acts read.—Then what will be the question for your determination, when you have weighed all the evidence? It is this, whether the prisoner has to your full satisfaction, and beyond all rational doubt, been guilty of any one of those overt acts? Now what is his defence? It is too short to bear the appearance of a statement; it is confined to a single point.—Gentlemen, it gives me satisfaction to say, that if the facts stated in my brief are true, the defence is exactly coincident with the declaration made by the defendant to *Lieutenant Coultman*, who, with the candor which has marked his repeated examinations during these trials, fairly disclosed it to the court and to you.

Gentlemen, the prisoner is not less deserving your attention because he moves in humble life; you are his peers. He is a journeyman carpenter, and it is a truth that he was at work on the 23d of *July*. It is true that he was in his working dress, had his apron on, and was with his master from the commencement of the day down to that terrific hour, when the inhabitants of this city were roused from their peaceful firesides and domestic comforts, by the drums beating to arms. On the firing being heard, he departed from his employer's house, and went to a house in *Dirty-Lane*, where he lodged, deviating a little way indeed to call at a tailor's for a pair of breeches. It was *Saturday* night, he
wanted

wanted his new cloathing for *Sunday* morning. This is a material part of the case, but to which the prisoner, from the nature of his situation can not, I fear, produce conclusive and satisfactory evidence, unless you give credit to the declaration he made, and which has been laid before you by a most credible witness produced by the crown, and which stands uncontradicted.

He states to me, Gentlemen of the Jury, that on his way to his lodgings, it being then dark, he met in the neighbourhood of the depot an armed body of men, from whom he fled in terror, supposing them to be rebels. The house where his tailor resided and from whence he came, is exactly opposite to the wall where it is alledged he was first discovered, that is, according to the vague and equivocal evidence of the soldier.

Gentlemen, this is the case of my client—you have heard the case on the part of the crown, upon which I am restricted from observing. But I trust it will not be considered that I overleap the pale within which I am confined by the rule of the court, I trust I will not be considered as animadverting upon the evidence for the crown, or attempting to do more than my duty to my client demands, in calling upon you, which I think I have a right to do, notwithstanding the injunction I labour under, to consider whether the soldier who appeared upon the table has contradicted the simple case I have laid before you. You will consider, whether he has contradicted this case, and you will consider what is still more material, whether in contradicting it, he has contradicted himself or his officer, in any fact sworn to by them, for such contradiction must affect his credit with you. I would say much more to you, gentlemen, upon that point, but in so doing I might be considered as innovating the rule prescribed to me, and the department pointed out by the court to my learned friend, that of speaking to evidence, which is now by that rule his peculiar and exclusive duty. But surely I may venture to tell you this, and I do freely and candidly tell you, that part of what I state cannot be corroborated by proof of witnesses, or by any other authority than the spontaneous and voluntary declaration of the prisoner himself, as already in evidence before you.

If you believe he spoke truth, where he alleged to the officer, that he fled from a party whom he supposed to be rebels, you will then acquit him, from a conviction that he is innocent, founded upon evidence brought forward on the part of the prosecution, which must always have much greater weight than evidence produced by the prisoner.

It is not speaking to evidence to say this.—Indeed, what I am about to recommend to your deliberation has been so repeatedly advanced, that the repetition becomes burthenfome. Counsel, toiling and anxiously communicating their ideas daily on similar subjects do not recollect that each jury they address is a new one, and often suppress what they should bring forward.

As far as the auditors, who have heretofore heard me, are among those who now attend, what I am going to urge must appear stale, but with you, gentlemen, I hope these repetitions, which my zeal and my duty stimulate, will not be found unprofitable to my client. I therefore repeat, and I therefore supplicate you to hear me with attention, when I repeat, that when you entered that box, your first duty was, and no doubt you felt it to be so, to divest your memories of every impression made by the circumstances of the times, and that you should depart, when you retire to consider your verdict, with minds perfectly chaste from every recollection of facts, that did not come before you in proof, by witnesses examined in court. You are not to determine upon the case of the prisoner, according to what you have heard abroad, or from what you suppose as private men; not from inferences, not from deductions, not from presumptions, unless they result clearly, satisfactorily and conclusively from indubitable facts, sworn to by witnesses of undoubted credit. You must not find this man guilty, unless your consciences enable you to say, “we find him guilty without a doubt upon our minds” for the benignity of the law has drawn an imperative rule for the conduct of juries, that is, —“where you *doubt*, you must acquit”—I will not further urge, what you must hear from the bench, which you have heard benevolently addressed to you by the leading counsel for the crown, “you must acquit if you have a doubt.” You could not sleep without a thorn in your pillows, if you convicted where you had a doubt.—Listen to, and engrave upon your hearts a golden rule of British jurisprudence, “It is better

better that ninety and nine guilty men should escape, than that one innocent man should suffer."

If you should convict this man, with doubt upon your minds, and it should afterwards occur that he was innocent, then God have mercy on your souls in the world to come, for while you remain upon this earth your lives would be lives of torture. But if you acquit him, and he should hereafter appear to be guilty, you will have this consolation, that you acted consistent with law, humanity, and the honest merciful dictates of that mentor which providence has placed as a guardian angel in every man's breast—his conscience. I say, the positive knowledge of guilt, in cases like the present, can only be known to the party charged himself and to heaven. God and the prisoner only can tell, whether he be actually guilty or innocent; you cannot, you dare not assume the power of providence. You cannot, from what you have heard, determine without a doubt, and with that doubt upon your minds, I call upon you, in the name of the Almighty, to acquit the prisoner.

JAMES ROURKE, *Examined by Mr. BALL.*

Q. What business do you follow?

A. A car and jaunting-car maker.

Q. Are you a contractor for military carriages?

A. I am.

Q. Where do you live?

A. In *Bridgefoot-street*. My house is on the opposite side from my working place.

Q. Upon which side of the way is your working place?

A. On the right hand as you go from the Bridge.

Q. *Bridgefoot-street* is the same which is called *Dirty-Lane*?

A. It is.

Q. Is your place higher or lower than *Bonham-street*?

A. It is higher.

Q. Is it higher than *Marshall-Lane*?

A. It is between the two.

Q. Do you know the Prisoner?

A. I do, he was my apprentice for a year.

Q. No.

Q. Do you recollect to have seen him on the night of this dreadful business?

A. I do, for I paid him in my office.

Q. Do you pay him a subsistence?

A. No, I pay him half-a-guinea a week.

Q. Was he at that time an apprentice?

A. He was.

Q. Did you pay any other men that night?

A. I did, all of them.

Q. Had you any assistant with you?

A. No, my clerk was out collecting money.

Q. Do you recollect any person assisting you, or refreshing your memory, as to the number of men, or their days work?

A. No.

Q. Did not the Prisoner, as being your apprentice, assist you?

A. No, we do not allow apprentices to do those things.

Q. What was the latest hour at which you saw him that night?

A. Since the bank-notes have been issued, we cannot find change for each man separately. We make out a docquet, and give them the whole amount of the money to get change for themselves. I had some work to get ready for government, tumbrils and carts, so that the men did not leave me till between seven and eight o'clock, and I remained in the office for some time after.

Q. Where was the Prisoner during that time?

A. I do not know.

Q. I ask you what was the latest time you saw him?

A. I cannot immediately say—It took me three quarters of an hour to settle the accounts of the week. I locked my gate, and with two other apprentices, went towards my home. I heard some shots and met a man running. I asked him where he was going, he said, "to fight;" I then saw the prisoner coming up,—"Jack," said I, "where have you been?" he answered, "at the pay-table," "are you paid?" "Yes," said he. "You have got drunk" "No, sir," said he, "Well then you had better go home;" he said he was going to his lodging.

Q. What direction was the man going in, who said he was going to fight?

A. Towards *Benham-street*.

Q. What

Q. What was the nature of the pay-table?

A. We make out a docquet, of the sums due to each man, and they go to some place where they divide the money.

Q. That is, they go to a public house?

A. Sometimes it is.

Q. Where is the pay-table of your men?

A. I do not know, because they have no regular one; for when they get into debt, they leave one place and go to another.

Q. Do you know where the prisoner lodges?

A. I do not exactly know the house, but I could say within a door or two of it.

Q. Was the place you met the Prisoner in at the same side as *Bonham-street*?

A. It was.

Q. Does the Prisoner lodge at *Mark Carr's*?

A. I believe so.

Q. Where does *Mark Carr* live?

A. In *Bonham-street*.

Q. Is it upon the right or the left as you go from *Dirty-Lane*?

A. It is upon the right.

Q. Do you know the deal-yard there?

A. Yes.

Q. Whereabouts is that?

A. It is in the center of *Marshall-lane*.

Q. Is part of it in *Bonham-street*?

A. I cannot say, for there is a division.

Q. But is there a deal-yard on the left side of *Bonham-street*?

A. There is.

Q. What is the distance from *Bonham-street* to *Marshall-lane*?

A. It is 100 yards, as I believe.

Q. How long have you known the Prisoner?

A. About eleven months, during which time he worked with me.

Q. What has been his general conduct and character?

A. He minded his business very well, and did not go out of the way in liquor.

Cross-examined by Mr. ATTORNEY GENERAL:

Q. What countryman is he ?

A. I cannot say---but heard him say, he was a county of *Meath* man.

Q. Was he with you, when you asked the man who was running, where he was going to ?

A. He was not.

Q. How soon did he come up ?

A. In about three or four minutes.

Q. Did you tell him what was going forward ?

A. I did not---I had not time.

Q. You bid him go home ?

A. I did.

Q. Was there not an attack upon the King's troops by the rebels ?

A. There was.

Q. Did it not begin before nine o'clock ?

A. Not in *Dirty-lane* till half past nine :---for the firing was first in *Thomas-street*---then there was a rush down *Dirty-lane*, and two soldiers were attacked by them.---There were two pensioners in my house, and one of them who had drank talked loud, and I was afraid the people without would hear him, and I made them lock the door and go up stairs. The mob made the soldiers turn their coats, and there being some confusion, the men got an opportunity of deserting and ran down street, and as far as I could see they got away. I was looking from a garret window, and my house is the highest in the street.

Q. Where was Col. *Browne* killed ?

A. About sixty yards from my house.

Q. Was that about nine o'clock ?

A. I think not---there was some carriage stopped there, and my wife was shrieking about and dragging me from the window.

Q. How many men have you working with you ?

A. Fifteen.

Q. Did they all return next morning except the prisoner ?

A. They did, and worked ever since.

Q. Had the prisoner time to go home before twelve o'clock ?

A. He had not ?

Q. What !

Q. What!—not in three hours from the time he left your place?

A. Oh!—in that time he could have got home.

Q. *By the Jury.* Did the prisoner work all day, that day, with you?

A. He did, the entire day till six o'clock. He never lost time of a working day.

Margaret Carr examined by

MR. MAC NALLY.

Q. Where do you live?

A. In *Bonham-street*.

Q. Do you follow any business?

A. My husband is a poor man, a carpenter, and works at a bench in the street.

Q. Are there any lodgers in your place?

A. There were at that time.

Q. Did a tailor lodge there?

A. There did.

Q. What is his name?

A. *Michael Finlay*.

Q. Do you know the prisoner?

A. I do.

Q. Do you remember the 23d of July?

A. I do---I was almost frightened to death.

Q. Can you remember whether you saw the prisoner on the night of the 23d of July?

A. I did indeed.

Q. Where did you see him?

A. In my place.

Q. At what hour did he leave your place?

A. In or about ten o'clock.

Q. Do you know what brought him there?

A. He had left a pair of small clothes with the young man the week before, and he came about them.

Q. Was the tailor at home that time?

A. He was not.

Q. Did he return while the prisoner waited there?

A. No.

Q. And upon that he went away?

A. He did.

No. 5.

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Cross-

Cross-examined by MR. SOLICITOR-GENERAL.

Q. Where is *Finlay*?

A. I believe at his work.

Q. At home?

A. No, at journey-work, unless he gets a job now and then.

Q. He was out that night?

A. He was at supper at *Stonybatter*, and the things were left at my place.

Q. He has a room at your house?

A. He has.

Q. And a bed?

A. He has.

Q. He is alive and in *Dublin*?

A. He is.

Q. What time did he come home?

A. He said he was stopped by a friend, who told him of the troubles, and that stopped him.

Q. Then he did not sleep at home that night?

A. No, he did not.

Q. What time had he been at your house that day?

A. Not after morning, when he went to work.

Q. Did the Prisoner call there any time that day before?

A. No.

Q. But at ten o'clock at night he went to look for *Finlay* at your place, who was not there?

A. He did.

Q. Did he go into *Finlay's* room?

A. He lodged in the same room where I was; I have lodging beds in it.

Q. Were the breeches made?

A. No.

Q. They were in the room?

A. They were.

Q. He saw them?

A. He did.

Q. They were not made, nor cut up?

A. They were not.

Q. He saw that?

A. He did.

Q. And

Q. And yet he waited for the tailor at 10 o'clock at night?

A. He did.

Q. Was it for *Finlay* he asked?

A. It was.

Q. How long did he stay waiting for *Finlay*?

A. I cannot say, for I was so ; alarmed he did not stay long.

Q. Was he away before 10 o'clock?

A. He was.

Q. And he had not far to go?

A. No.

Q. (*By the Court.* You say you were alarmed ; at what, pray?

A. At the business that was going on.

Q. Was it going on then?

A. It was, for I heard the shots.)

Q. Had it begun when the prisoner came in?

A. No, I think not ; I went out for milk for my children, and heard the shots, and I returned and saw the prisoner there.

Q. How long did he remain after the business began, as you say?

A. About ten minutes.

Q. *By the Jury.* How long was the stuff for the breeches left there?

A. Some day in the week.

Q. What sort of stuff was it?

A. I think it was corduroy.

Q. Had you any conversation with the prisoner?

A. I had not, I was so much alarmed at what was going forward.

MR. BALL, on the part of the Prisoner proposed to leave the case to the Jury, without troubling them or the court with any observations.

MR. SOLICITOR GENERAL said, he thought his duty required him to observe upon the evidence.

And The COURT said, this was a case which required every elucidation, and would not wish on their part to put the life of a man in competition with their own trouble, or the time of the public.

Mr. BALL.

My Lords and Gentlemen of the Jury,

It appears from the conduct of the prosecutor, in insisting on his right of addressing you at this stage of the trial, though the counsel for the prisoner are inclined to waive that privilege, that the evidence given in behalf of the prosecution is of such a nature, as requires some observations in order to point and level it against the prisoner. The opinion of those who advise the prisoner and conduct his defence is, that the evidence is of such a nature as does upon the direct view of it, unincumbered with argument and observation, justify them in thinking, that it was not incumbent upon them to occupy your time in discussing it, but they were willing to leave it to its own merits. And therefore the Solicitor General having determined to give the aid of his argument in support of the case made for the crown, I am now called upon, not to support a defence, which I feel in itself not to be sufficiently strong, but to endeavour to anticipate what strength the facts, which are admitted to be insufficient by themselves, may gain, by the ingenious observations of the counsel for the prosecutor. I am therefore obliged to guess as nearly as I can, what course the Solicitor will take to support the prosecution, though I am convinced that when the life of a fellow-creature is at stake, you will not be persuaded by any argument however ingenious—by any address however eloquent and persuasive, to find the prisoner guilty, unless the evidence, unaccompanied by any efforts of sophistry, and supported only by its own simple, unadorned, and naked tendency, shall inevitably impress you with a conviction of his guilt.—That no such clear, controlling, and imperative force exists in the evidence, appears from the testimony of the Counsel for the Crown themselves, who plainly tell you, that without the force of their observations and argument, they don't think the evidence in itself strong enough to compel you to pronounce a verdict of Guilty. I take it for granted, the Solicitor General will follow the Attorney General in his statement when he observed upon the trade and residence of the prisoner, and drew your attention so forcibly and so critically to the circumstance of his being a carpenter, and of his dwelling in *Bridgefoot-street*. He will assume, that you will

will assume that every man in that condition of life, and in that neighbourhood, was a rebel; that it was impossible that any carpenter in that part of the town, could be innocent; and he may infer from them, that the prisoner being as it were by position—a rebel, living in the very center of disaffection, surrounded by the materials with which the rebel armoury was supplied, skilled himself in the manufacture of those instruments with which they were armed, that he ought *prima facie* to be supposed guilty, and that at least, you should be satisfied with doubtful, weak, and slender evidence against him.

Mr. ATTORNEY GENERAL.—I beg leave to observe, that I made the contrary inference,

Mr. BALL.—There is no doubt, that in observing upon the trade of the prisoner, a caution was used in drawing the inference, which reminded me of the advice given to some persons who were inflicting summary punishment upon a bailiff,—“do not nail the man's ears to the pump.”—The ATTORNEY GENERAL did wisely and prudently give you a caution; but before he gave you the caution, he administered the poison. I cannot conceive why a gentleman of his reach of understanding should begin by telling you, that the prisoner was of a trade, and inhabited a neighbourhood, both of which had made a very conspicuous figure in the recent insurrection: namely, that he was a carpenter, residing in the neighbourhood of *Thomas-street*, unless with the view of making some impression against him. And I say, I expect and fear, that the SOLICITOR GENERAL may think, that in a case of this kind, where the general crime is notorious, and where peculiar suspicion may be applicable to the prisoner's trade, condition of life, and residence, that you should be satisfied with slighter evidence than would be necessary to convict a man of an unimpeached calling, of a different rank in life, and who resided in an unsuspected neighbourhood. My reply by anticipation is, that you are in no one case, where the life of a man is at stake, to be satisfied with slighter evidence, than you would in any other. You are to expect, on this great and momentous occasion, that degree of evidence which in any ordinary case would be necessary to satisfy you; and I entreat your pardon, if I endeavour to fortify your minds against a prejudice that may

may possibly obtrude itself upon you—a prejudice arising from the peculiar nature of the crime with which the prisoner stands charged—a crime of the highest and blackest guilt—a crime involving in its completion your own lives and those of your families, your ease, your properties, and your peace of mind. You are not trying a man for a murder by which a stranger lost his life—a robbery by which another man lost his property—or a burning by which a distant house with which you had no connection was destroyed; but you are trying a man for an offence, by which if he was guilty,—yourselves, your wives and children, your mansions, and your fortunes were to have fallen in one common ruin. Exalt, I beseech you, your minds to that lofty and commanding level; from whence you may, for a while, look beyond those dear and alluring objects—view and contemplate from thence with a calm and steady eye—a serene and undivided attention, that awful duty which you are called upon to discharge; forget the magnitude, and regard alone the certainty of guilt—the obligation of your oaths—the duty of your office—the responsibility you owe to the prisoner and to your God, are not less binding on your conscience now, than if you were trying the smallest of those offences on which the policy of the law has reluctantly inflicted the punishment of death. If in the case of a common robbery, or even an assault, you must have witnesses above all exception to prove the direct fact; you must demand the same evidence in a case, where even the safety of the state, or yourselves and families is directly attacked. It is not because the general system of the evidence is true, or the preliminary facts unhappily too notorious, that you will confound in the general mass of truth, integrity, clearness and precision, such part of the evidence as is devoid of all these qualities, and because much is proved you will not infer more: you are to separate the evidence—you are to adopt that which is true—you are to reject that which is not so, or which is even doubtful. What is the character of truth? It is clear and uniform. The witness who falsifies in one part is not to be believed in any; so that you are to consider and well weigh the evidence which is adduced to affect the prisoner; you will compare it, and scrutinize it with the same principles of investigation, and the same guard of caution as you would on any ordinary accusation.

To have been in a deal yard at that hour of the night, is not a crime of itself, it is a fact that might happen to the most innocent man, if in the situation in which the prisoner alleged himself to be; was it a forged and fabricated story? if it was, the prisoner must have been instantly detected by ordinary prudence, by merely crossing the way in *Benham-street*, and making the enquiry which he challenged—which he endeavoured to provoke by his open and candid disclosure, but which unhappily for him was not made: he was a single man and alone, and escaped into that yard, as he alleged to avoid the pikemen, he had good reason to avoid them; he was the servant of a man whose conduct was such, that he had preserved a whole body of workmen from the dreadful and almost epidemic contagion; a man who was possessed of the materials necessary for treasonable weapons, and yet, during the whole time of the conspiracy he never had missed so much of his stock as would have made a single pike, nor has there been any one of his men a subject even of suspicion, and therefore the prisoner was not likely to expect much mercy from the pikemen, if he fell in their way. Now what is the fact with respect to the prisoner, as you have it from clear and indubitable evidence, which you cannot but believe? For the principle of enquiry into truth which common sense and reason affords, is an examination upon the oath by particular personal interrogatories; if that shall cease to be the principle upon which truth is investigated I should be glad to know which of you could produce evidence to resist a charge made, if by withholding your credit from an unimpeached witness, whose evidence, is clear and consistent, you shall endanger the foundation of judicial evidence in general. What is the evidence of *Rourke*? The prisoner had never been a single hour absent from his work, previous to the 23d of July. On that day from six in the morning till the hour of receiving his wages, he regularly attended. Circumstances arising from the distress of the times, and from that which is the source of all our calamities had occasioned some degree of inconvenience in the payment of workmen; the consequence was that they were obliged to assemble at certain places, for the purpose of dividing the money according to their several rights; therefore the whole of these fifteen innocent men went together from their

their work-yard ; I say innocent men, because not one of them was absent nor has fallen under suspicion. The prisoner went with them. What did he do afterwards ? In a reasonable time after the partition of their wages, he was seen upon his return by his master, who was known to be a loyal man in the employment of government. What circumstances occur ? A man runs by, saying he was going to fight ; whereupon the witness addresses the prisoner and asks him are you going to join this foolish business ? thinking it was a boxing match : he saw the prisoner return, and on the very spot where he ought to be, on his way towards his lodging, if he suspected any unlawful business he might easily detect him. The prisoner walked quietly along, not running in haste like the former person, who was going to fight ; his master upbraids him for being drunk, which the prisoner denies, although I suppose you know, no man keeps a pay table without distributing drink among the persons who assemble there however after this interview with his master he proceeded homeward. The veracity of the witness in this respect you cannot doubt, he then turned up a street directly between his master's house and his lodging, for what ? For the innocent purpose of enquiring for some of his cloaths, which he had left at a tailor's some days before, to be made. It has been insinuated that the tailor was a rebel ; I do not know whether he was or not, but if he were, the prisoner did not know it, for the prisoner would not have gone to look for him in his lodging at a time when all the rebels were assembling according to their different destinations, he enquired whether the tailor was at home. But the counsel, hearing that after he had got his answer he remained some time longer at the tailor's, ask did he stay till the breeches were made ? Why, gentlemen, he waited, it is true, some short time in expectation of seeing the tailor.

Then it is objected, he had only a few yards to go home : it is true, but it appears when he came out of the house where the tailor lodged, that *Bridgefoot-street*, where he lodged was filled with rebels, and he immediately fled from them into the first place of safety that occurred, the timber-yard, over the wall of which he went. You will observe that the rebels, who had been collected all together, were repulsed by the King's forces,
and

and if the prisoner had been associated with them, it is natural to suppose that some of his companions would have taken refuge with him, therefore his being found alone is a strong reason to shew that he did not act with any party of men, but that the truth was, as he alleged, he took refuge there, to avoid the hostility of the pikemen. Gentlemen, you will observe what I have already stated, that it is impossible to produce direct evidence of that fact, but you will enquire whether that fact be inconsistent with the prisoner's conduct, and whether it be a fact capable of proof. You are not to infer, that because it is not proved, therefore it is false, because unless he knew some of the forces of the rebels; and could produce them here, to shew that he fled from them, it is impossible to prove the fact. But what has he done? He stated that fact to the witness, Lieutenant *Coulman*, at the moment of his arrest, giving him an opportunity to contradict it, so that no false tale could have availed him. What did he tell the officer? That he fled because he was in danger, from the rebels. He told him where he lived; where he had worked that day; and it appears he was dressed in the way of his trade, like a man recently from his work, with his apron upon him. He told the witness he had gone into *Bonham-street*, for the purpose of enquiring for his small-clothes, and he pointed to the very house here he had been. What then is the best evidence that could have been produced against him, if he were guilty? I will state what would have been the best evidence in that case: the officer might have gone to the house to which the prisoner had referred, and might have confronted him with the people there; if his story were false, it would then have been detected on the spot, and instead of this being a case upon which you would have to exercise your judgments, or the discriminating powers of your understanding, your office would be merely ministerial, you would have nothing to do, but hear the evidence and the indictment, and pronounce your verdict.

By this defect of enquiry which ought to have been made, and to which the prisoner threw himself open, a defect not of his, but of those acting for the crown, is he now exposed to any difficulty, because if a contradiction and refusal of his assertion would have subjected him to inevitable conviction, so the corroboration of it by the

people of the house would have entitled him to an instantaneous acquittal. It would do more, I will take upon me to say, from the intelligent mind of *Lieutenant Coultsman*, that if he had made the enquiry, and found the prisoner's representation to be confirmed in all its circumstances by the people of the house, he would have instantly discharged the prisoner.

Now, Gentlemen, see what the evidence is tending to support the accusation against the prisoner. Is there any other circumstance of guilt, except the evidence of the soldier, who swears that he saw a pike in the prisoner's hand, and upon that single fact, which is the whole strength of the prosecution, is to be found, in my opinion, the most deplorable weakness: if he had not the pike, there is no more reason to impute guilt to him, than to any one of you, or to any man in the court. Who is it tells you the prisoner had a pike? He is a man who has either told you a deceit, or intentional falsehood, or who has so confused and so uncertain a knowledge of the facts, that he is unable to give an accurate statement of them. Which of the witnesses will you believe? Will you say that what *Lieutenant Coultsman* stated is not true? If it be not true, then no pike was found in the yard at all, and therefore the fact of the pike utterly falls to the ground. Are you prepared to say, that *Lieutenant Coultsman's* evidence is true? If so, then you must disbelieve the soldier, because *Lieutenant Coultsman* contradicts him in material points, and the soldier is the only witness that attempts to bring home the charge of the pike to the prisoner. *Lieutenant Coultsman* saw a pike, but he does not in any way bring that pike home to the prisoner. It was lying in a large yard, where many pikes had probably been, that evening, for he supposes that all the pikes which he saw in *Bonham-street*, had been thrown out of that yard, and at all events the soldier swears that the pike which *Coultsman* saw was not the pike which the prisoner had held, for he, the witness, declares, that he himself threw the prisoner's pike over the wall, and he, the only witness to any material and conclusive fact against the prisoner, swears positively that *Lieutenant Coultsman* saw no pike; for that there was no pike in the yard after that officer and the other soldiers got into it. Thus he is flatly and directly contradicted in an essential point by *Lieutenant Coultsman*. But attend

attend him further, examine his evidence step by step, and see whether you can give him credit in any part of his statement.

Now, Gentlemen, see what his evidence is; he says that there were large pieces of timber lying against the wall in *Bonham-street*, and that he saw the prisoner running over it, and that he, the witness, went after him; upon his evidence taken altogether, the guilt or innocence of the prisoner rests; and I will shortly analyze that evidence. He saw the prisoner run over the wall with a pike in his hand, he runs upon the wall after him; what is his account then of the transaction? I entreat you minutely to attend to his expressions. Does he say, "the fellow I saw with the pike is here still?" which is the very form of words he would have used, if the fact be true. No, but he cried out, "here is a rebel, and he has a pike in his hand." Those are the words he would have used if he had unexpectedly seen a man for the first time, not if he had again seen one whom he knew to be there, and whom he had seen immediately before. They are words of discovery, not of ascertainment; the witness then says he drew his bayonet in order to defend himself, and you will remember, Gentlemen, that armed with that bayonet he went and took the prisoner lurking under the timber, that the pike was within a yard of him, and so cautious was the witness that, though the man sunk as was described, under the root of the tree, and there was no danger from him, and although the witness had no arms, but the bayonet to defend himself against any others, he took up that pike, and to be more upon his guard, threw it over the wall, lest he should be assailed by other rebels, while he was opening the gate, as he was desired by his officer. Observe, Gentlemen, how circumstantially he tells his story—he states to you his fears, the nature of them; the end, the means he took to avert the danger. If he has stated those circumstances falsely, he has done it through design; it is impossible he could invent them through forgetfulness. A man may through weakness of memory forget what he has known, but cannot from the same cause remember what he never knew. I will undertake to show you, that he has invented all those facts which he has detailed with such precision. First, the story the soldier tells is in itself improbable; for, Gentlemen, according to my reasoning, if one person whom I was

pursuing should throw away his pike, I would rather use it, as putting myself upon a level with any other person who might attack me, than throw it over the wall: but the fact is not corroborated by any other evidence, which, if it were true, that the pike had been tossed over the wall, might easily have been done, for all the party waiting at the outside must have seen it. Was there any other pike there? No, says the soldier. "What became of it?" "I threw it over the wall before *Lieutenant Coultsman* came in". What is *Lieutenant Coultsman's* evidence? That he found a pike in the yard; he said he did not find it with the prisoner, nor near him, so it could not be the pike of the prisoner. The only witness that attaches the fact of the pike in the prisoner's hands shews it was not the prisoner's pike that *Lieutenant Coultsman* saw, because the prisoner's pike was thrown over the wall, and therefore if a pike was found afterwards in the yard, as *Lieutenant Coultsman* says, it was not brought in by the prisoner; if not, who brought it there? It is utterly inconsistent with the prisoner's case, that he could prove it, but beyond all manner of contradiction the one found by *Lieutenant Coultsman* was not the pike of the prisoner, and give me leave also to say, that this timber-yard where the prisoner took refuge, does not appear to be a depot of pikes; finding but the one pike, as *Lieutenant Coultsman* says, together with the doubtful one spoken of by the soldier, is strong evidence to show that it was not a depot. Upon the whole, which of the witnesses will you believe? *Lieutenant Coultsman* or the soldier? Will you be asked to say, it is of very little consequence, and that it makes no difference whether there was one pike or two pikes, that the prisoner had a pike and that is sufficient? No, gentlemen, this cannot be expected from you, if you cannot speak with certainty you cannot convict, the criminality of the prisoner rests upon the identity of the pike, which then will you believe?

Can you say that the pike which he had was the one which was found by *Lieut. Coultsman*? No---for that was not near him, nor is it pretended that the prisoner knew any thing of that pike, besides, the soldier denies and falsifies that account by saying, he threw the pike which the prisoner had into the street; the evidence at best is calculated to puzzle and perplex you, and if you give implicit

implicit credit to such contradictory, vague and uncertain accounts, unless you cut the gordian knot, you cannot satisfy your minds; but, Gentlemen, you will not do that violence, when a plain and obvious rule of common sense will gently untie and unravel the difficulty---namely, that a witness contradicted by others equally entitled to credit, must not be believed. That no man's life should fall beneath such evidence---that it is better 100 guilty persons should escape, than one innocent person suffer. I have, however, Gentlemen, further observations to make upon the evidence of the soldier, as contrasted with that of the officer, which will, in my opinion, strongly corroborate (if they have any weight at all) these which I have already made. There is one other important circumstance which I think it necessary to observe upon---it is an unconnected, single, detached fact---nothing more is necessary than barely to state it---speaking trumpet tongued, that the evidence of the soldier ought not to be believed; he either forgets the transaction in toto, or he forgets most important facts, and those facts of a nature to make a strong and lasting impression upon his mind---because clearly and immediately connected with his own personal safety---because of being connected with his own self-defence, the strongest passion of nature---their impression must be indelible. He admits that there were fears for his safety---but he forgets that it was the officer that first suggested these fears. He admits that he was armed for his defence, but he forgets the nature of these arms. The officer tells you he armed the soldier with a pistol---the soldier tells you that he armed himself with his drawn bayonet only. The soldier tells you he threw away the pike, lest some unfeeling rebel might seize it, because he had no arms that could resist a pike. But, Gentlemen, he had arms that might have defended him against a pike---he had a pistol---and that fact he denies.

I do not wish to cast the stigma of intentional falsehood on any witness brought forward by the government of the country. That he has sworn falsely cannot be denied; can this falsehood be accounted for in any way favourable to the witness? the fate of the prisoner is not connected with this consideration, the credit of this and all the late prosecutions alone is at stake on the question. I sincerely hope
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that those falsehoods and contradictions have arisen from the confusion of the man, his inaccuracy of recollection and judgment ; but are you, Gentlemen, to hang a wretched prisoner, because a man tells a story comprizing a number of facts of which his recollection, his judgment and his observation as to the persons, time and circumstances of the transaction have been confused, indistinct, inconsistent and contradicted ? Is there not in all this something upon which you should long and long hesitate, before you would consign an individual to death ? In your anxiety that a guilty man should not escape, do not forget that it is your duty also to take care that an innocent man shall not suffer. Do not, Gentlemen, suffer that humane, wise and just principle of the law which I have quoted to you before, and to which I now allude, to be perverted.

If the period wanted examples, if this unprecedented outrage at which human nature shudders and revolts, were unnoticed and unrevenged, that might have some weight upon your minds ; were it a case of a single murder and a single person were charged with it, were it a conflagration of the city, and only one person charged ; were it the overthrow of the government, and a single culprit alone charged with the offence, if it were consistent with human regulation, let that man suffer ; let the most scrupulous caution be applied to prevent the possibility of his escape, if guilty. To have crimes committed and no persons to undergo punishment, might give dreadful encouragement to similar outrages ; but here multitudes have been taken, not under equivocal circumstances ; many have been tried and their crimes brought home by a body of evidence connected and dove-tailed together. Examples have been made already, others are yet to come ; no temptation to overstep the cool and cautious rules of criminal jurisprudence presents itself. Some have confessed their guilt : but if there were no other, if the prisoner were the first, and was to be the last to be accused, there is something in the case that will revolt and terrify the mind of a jury before they convict him. But he is not the last, he is not a necessary victim : great examples are yet to come, and may it be propitious to the country, to shew that as the vigilance of government has detected and defeated this conspiracy and brought the guilty to the bar, there to fall under the sword of justice—yet, if a man have
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an honest case upon his own evidence, if a weak case be made against him, arising from the defect of the evidence for the Crown; he has as fair a chance of acquittal as the man of decided guilt has a certainty of conviction:—for what purpose is conviction desired? not to add to the number of examples, because the sword of Justice need reach to but a small number, to make good and salutary examples; but it is necessary to let the remaining guilty see, that their best defence is to come forward and make a full disclosure of their crimes, and their accomplices; and therefore let it be known, that the guilty man must suffer if he does not reconcile himself to government, and let it be seen that those sanguinary, barbarous, vehement, and violent men, who would hurry on to the destruction of their fellow-citizens, are plunging themselves in inevitable ruin; but let it be also felt, that none but those who have been convicted by clear and unsuspected evidence, and not the man upon whom suspicion only can attach, shall fall beneath the law. Be severe, but be just. The law of rebels, is violence—suspicion with them, is proof—accusation, is conviction—and their punishment, is murder. Terror and passion preside in their councils—justice and mercy, are strangers—shew them the awful contrast between usurped, and legitimate authority—demonstrate to them, and to the world, by your verdict—that coolness and deliberate wisdom, candid investigation—dispassionate enquiry—and impartial decision; are the attributes of that law, at which they have contemptuously spurned.

MR. SOLICITOR GENERAL,

My Lords, and Gentlemen of the Jury :

It falls to my lot to conclude this trial, by a few observations upon the evidence; and I would not pay that respect to *Mr. Ball*, which he is entitled to, unless I assigned the reason of my troubling you. Gentlemen, you will please to recollect, that when *Mr. Mac Nally* addressed the Court, he was proceeding to observe upon the evidence, and upon the contradictions between the witnesses; but he was told, that duty should be reserved for *Mr. Ball*, upon which he desisted, after a pretty strong impeachment of the evidence. But when the opportunity occurred,

turred, *Mr. Ball* seemed to decline it, and therefore I thought it right to acquaint him, that I should observe upon the evidence—to shew, that the evidence was free from stigma, and that this is as clear and conclusive a case, as any which has come before the Court.—The party who wished to avoid explanation, was declining to speak to the evidence, and I do not wonder that he did so; because it will appear, that there is no contradiction between the witnesses in any material point: and I shall submit to you, that the case made by the prisoner, shews his own guilt, and irresistably corroborates the case of the Crown.

The first part of the evidence which relates to the prisoner, (not to trouble you with the facts concerning the rebellion; because they are not denied) arises from the transaction of *Lieutenant Coulman*, attended by others, advancing up *Dirty-lane*. The situation of the leading persons, was this:—*Mills* held a flambeaux beside the officer—*Gallagher* the soldier was advanced—I mention this, to shew, that it was impossible any man seeing this party approaching, could mistake them. The foremost man was dressed in a military uniform, the second was an officer in his regimentals, and there was a light, which could shew at a distance what they were. Therefore, it is impossible they could be mistaken for any other party, and that is important, as meeting the attempt which was made by *Mr. Mac Nally*, to account for the flight of his client; and in addition to this, though the other persons were dressed in their ordinary clothes, and not in uniform, yet they had cross-belts on, which are more distinguishable at a distance than the colour of an uniform.

When the party arrived at the corner of *Bonham-street*, *Gallagher* swears, he saw a man running, and that he leaped over the wall. That must have been the case; because he would not have noticed the wall, unless he saw something that way; neither would he have been induced to quit his party, unless something was presented to his view, which required investigation. This demonstrates, that he could not be mistaken in that respect—when he got upon the timber, he exclaims, “Here is a man with a pike.” *Mr. Ball* relies upon it, that the soldier’s testimony is to be considered solely by itself. But you will observe, that the other witnesses confirm him; they agree that he did exclaim, “There was a man with
a pike!”

a pike!" What object could the soldier have had in stating a falsehood at that time? It was a sudden exclamation, when there was no time to deliberate upon plan or contrivance, without any motive of falsehood; it was in the moment of danger, when nothing but truth was likely to escape his lips. There was no other person found in the yard, save the prisoner, and that he was the man who jumped over the wall, upon the approach of the military, there can be no doubt upon any reasonable mind. Then the whole difficulty which has been attempted to be raised, is the transaction immediately following—in the account of which, there, in truth, is no contradiction; but even if there were, it is of no consequence in the case. The finding of the pike, one way or the other, is perfectly immaterial to the point in issue, namely, the identity of the man, and this enables me to apply a rule which was stated by *Mr. Ball* himself, upon a former case, that trifling inconsistencies do not defeat the testimony of witnesses, but rather serve to corroborate them, because they shew, that the witnesses do not come with prepared stories, but declare the truth, and slight, trifling deviations appear, according as the mind or recollection of each particular witness was affected.

But I do not rest upon that---I shall shew, that there was no contradiction whatever. Two points of contradiction have been relied upon. The soldier says, he did not get a pistol, when going over the wall---the officer says he did. But it appears upon another occasion, in the course of the same night, the soldier acknowledges he got a pistol, and that was, when he entered the depot; for it appears, that being a courageous man, he was foremost in every danger, and the transaction of the pistol having taken place might be mistaken by the officer, and not by the soldier, because he was the actor in the business. The pistol was not necessary at the deal yard, because the prisoner threw away his pike, and hid himself before *Gallagher* jumped down. But let which of the witnesses be mistaken, or whether there be a mistake or not, it is not material, because the main question is, as to the identity of the man.

The next contradiction relied upon, is the account respecting the pike. One of the witnesses states, that it was thrown over the wall---the other states, he found a pike in the yard---now Gentlemen, consider their situa-

tion. The soldier was within the yard, looking with attention towards the prisoner and the pike, while those without were collected at the gate, waiting for admission---so that the pike might have been thrown over the wall without the officer perceiving it, and it might have been found there by the officer, when he was giving the prisoner up to another party. Now, what could induce the witness to tell a falsehood in this respect? If the pike were found in the yard by the officer, it might have been brought in by some of his party and dropped, when they were dragging the prisoner from under the timber. Look at the conduct of the soldier---is it probable, that he would falsely swear away the life of the prisoner? It was the soldier's clemency which saved the prisoner at the moment of his arrest. He would have been sacrificed upon the spot, by the warm zeal of the subject---he owes his existence at this time to that soldier, whose character, the Counsel are instructed to defame---a man who exerted his clemency at a time of great heat and confusion, amidst which he preserves the life of the prisoner. This, Gentlemen, is a powerful circumstance to weigh upon your minds, and to induce you to give credit to that man. It is not an important point, upon which this variation appears---but this fact is certain, that a pike was there, and there is no way of accounting for it, but by the prisoner having had it. That fact is confirmed by the testimony of *Lieutenant Coulman*; he says, the soldier called out, "Here is a man, *with a pike*." Can you believe, in saying that, he concerted a falsehood before so many, who could detect him in a moment; when there was no opportunity for concert or design? And therefore, Gentlemen, I submit, that there is no important contradiction whatever, and that the material fact is strongly confirmed.

But the Learned Counsel has pressed upon your minds, the case of a robbery, and two bundles of clothes found---but where is the analogy? The contradiction does not apply to that, which is the subject of the guilt---here the identity is ascertained beyond all question---for the prisoner was found upon the spot, and he has been in custody ever since. He fled from the party upon their approach---that he admits, and that he had a pike is equally clear, and whether it was found near him upon the ground, or whether it was thrown over the wall is utterly immaterial.

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The main fact is not contradicted, but is confirmed by the witnesses for the prisoner---for it is admitted by him, that he fled over the wall, and the only question is, what was his motive for so doing? There is no dispute as to his identity or his jumping over the wall---the finding of the pike is not contradicted---and the only question is, what was his intent in having it, and what could have induced him to fly from his Majesty's troops. The prisoner found it necessary to account for this conduct, and the evidence produced, confirms the case of the prosecution, and leaves no reasonable doubt of his guilt.

The account given of him is, that between seven and eight o'clock, he left his employer's house, to get his share of the money, paid upon the workmen's account. At nine o'clock, the rebels were arming themselves, within a few yards of the spot where this employer lived, and their conduct was such, that no loyal man could escape their fury. *Mr. Wilson*, the peace officer, escaped by an intrepidity, which every man must admire. *Colonel Browne* fell a victim to their rage---this was before nine o'clock. Can you believe, with all these circumstances of rebellion which affected a loyal man, the prisoner's employer, to such a degree, that he fled to the upper part of his house---that the prisoner could remain abroad, if he were an innocent man---what would his conduct have been if he were a loyal man? Would he go to the tailor's to seek for ornaments to decorate his person, upon the following day? Could any thought occupy his mind, but that of saving his life? His master warned him to go home---he did not want the caution of the master, to apprize him of what was going forward---the scene of mischief was within a few yards of him. But instead of going home, he goes, as it is alleged, to the lodging of the tailor; at the very hour when the rebellion was raging, he goes in search of an article of dress. The tailor was not at home that night---why is he not produced, to shew that he was engaged to make the article, or promised to have it made? Because he might appear to be one of those, who had the audacity, to raise their arms against the government---and would damn the side for which he was produced. Does the prisoner go away, when he is informed that the cloth is not cut up, and when it was idle to expect, that the breeches could be finished? No, he waits ten minutes for the tailor, as if

he were to regulate his conduct for the night—he is left in the street, from ten o'clock till twelve, when he is found and taken—how he spent these two hours, during which no loyal man could appear, is not accounted for. Has he produced the persons in whose house he lodged, or any circumstance whatever, to occupy the time which is unaccounted for?

Let me ask you, what would have been the conduct of a loyal man, having no more than forty or fifty yards to go? Observe also the situation of the family where the tailor lodged; they were so terrified, that they could not converse with him after he left the house, he continued two hours unmolested, without any injury offered to his person, could any loyal man continue there such a length of time? What was his conduct when he saw the military approach? He saw the uniforms of some, and the cross-belts of others—he flies: Where? Into a deal-yard, to which he might have fled, if he were a loyal man, at a much earlier hour, and with the same kind of weapon, which all the other rebels had. So that coupling his evidence, with that which was given on the part of the Crown, it corroborates the latter—if he alleged he had been compelled, he might have made a more feasible case. But the circumstance of his flight, would have defeated that case—and his case now is, that he was a loyal man, and it appears he remained two hours among rebels, without going home, which he might easily have done.

Gentlemen, before I sit down it is necessary to make one observation, upon the conclusion of *Mr. Ball's* speech: He solicits the acquittal of his client, upon a ground, which were I to pass unnoticed, and without censure, I should not discharge my duty. He calls upon you to shew mercy to this man, because it is not the first trial; but that if it were the first trial, you might overleap the laws of the country, for the sake of what he calls an example; that you might convict though the evidence was not satisfactory, but here you should acquit although it is conclusive.

Gentlemen, I trust, that no jury will consider any thing, but what constitutes part of the case in evidence. You are not to consider the consequences; or whether others have been convicted, or may be convicted; you are sworn to try according to the evidence, and a true
verdict

verdict give according to that evidence. The consequences suggested may influence a politician, but should have no effect in the Jury-box. Lay your hands upon your hearts, and ask yourselves whether you can say you have a rational doubt, that the Prisoner was associated with rebels against the government, and that you cannot account for his conduct upon any other proposition. If you have a doubt, give the prisoner the benefit of it, provided it be such as reasonable men may entertain. If you have no doubt, you have a solemn and sacred duty to discharge, to do justice to your country and to yourselves, rendering a more essential service to the cause of humanity by a verdict of guilty, shewing persons of this description, that when they embark in desperate outrages, the sentence of the law will punish them for their offence.

LORD NORBURY.

Gentlemen of the Jury,

I am glad for your sakes as well as my own, that this case has been ably spoken to on both sides; I will not take up many minutes of your time in directing your attention to the matter which you are to try. The indictment is for high-treason and the overt acts which form the immediate object of your enquiry are, that the prisoner waged and levied war, and armed himself with a pike, and did associate with a number of other persons in military array; these overt acts are stated in the first count, which is for compassing and imagining the death of the king; and there is one count upon the other branch of the statute, for compassing to levy war, stating as an overt act, that he did actually levy war. I shall come directly to the evidence, because there is no man in the community who does not now know the tendency of these prosecutions. Though you cannot take into your consideration the circumstances of other trials, yet the opening of the case, and the arguments of the counsel on each side, have directed your mind to what is your exclusive duty, namely, the inference to be drawn from matter of fact. No doubt remains of that which is the primary consideration, namely, that there did exist a rebellious insurrection, and a levying of war in the city of *Dublin*, at the period in question, and therefore

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it would be wasting your time to detail the evidence upon that. I shall come therefore directly to that which is of difficulty enough to engage your attention, and without directing you to any conclusion, I shall endeavour to assist you to form that which may be the right one.

The first witness in the case was *Mr. Wilson*, whose whose evidence establishes one general fact, that there was a rising that night, and that the insurgents were armed with pikes, they assembled in *Thomas-street*, and went down *Marshalsea-lane*, where was afterwards found a general depot, containing implements of destruction of such variety and extent, as leaves no doubt for what purpose they were prepared. The existence of the treason and conspiracy being thus established, the principal question is, whether the prisoner was concerned in it; because you must be satisfied before you find him guilty, that he did take some active part in forwarding that conspiracy.

In order to bring the guilt home to him, *Lieutenant Cooltman* describes his going after twelve o'clock of the night in which the disastrous events are sworn to have happened, with a party amounting to twenty-eight, towards *Bonham-street* and *Dirty-lane*; at the entrance of *Bonham-street*, where there are three deal-yards adjoining *Marshalsea-lane*, they found a machine of timber which was described to you, as calculated for the general purpose of destruction: the party moved all together, some of them were in military dress, and one of them held a flambeaux in front. You are to judge from these circumstances, whether these appearances could intimate to any person whom they might approach, of what description they were; of that party one private in military uniform appears to have been somewhat advanced more than the rest, that was *Gallagher*, and there seems to be no doubt that he made use of the expressions which called upon the attention of the rest of the party, he exclaimed that "there was a rebel with a pike," that was when he approached the timber-yard in which the prisoner was afterwards found. Some timber was also piled against the wall, by which the soldier climbed and got access without opening the gate; when *Gallagher* had ascended this timber, and looked over the wall, he exclaimed, "here's the rebel, he is throwing away his pike and hiding himself." Gentlemen, you are to judge whether

whether this exclamation addressed to the party behind him, was so loud that the prisoner could hear it. When the gate was opened, the party entered, and saw the prisoner concealed, all but his legs, by which he was dragged from under the timber. There was no person with him at the time, and here you will have much to investigate. *Lieutenant Coultman* says, he got a pike within a yard where the prisoner lay, and *Gallagher* says, that he threw the pike which the prisoner had over the wall, (here his lordship minutely recapitulated the testimony of *Lieutenant Coultman*, and observed, that it appeared from his cross-examination, that the prisoner offered to shew his place of abode, and that he had been at a tailor's, whose place he pointed out, at the time; and his lordship then stated the testimony given by *Rice* and *Gallagher*, and then continued his observations to the Jury.) Gentlemen you are to judge, whether the person whom *Gallagher* first saw, was the same person whom he saw afterwards in the timber-yard: the pursuit was made by the witness over the timber to the wall, and in consequence of that pursuit some person was seen. The witness called out, that he saw a man with a pike—that he was letting it fall, was diving under the timber; whether the witness could be so inspired as to pursue without seeing a party fly, you are to judge; the pursuit and the finding of a man seemed to be connected with the preceding circumstance of seeing a man run: the officer followed, and the fact of finding the prisoner is incontrovertible. *Gallagher* says, he threw the pike over the wall; In that he disagrees with *Lieutenant Coultman*; whether that circumstance did not draw the officer's attention, if it happened, or whether it escaped his observation, will be for you to consider, because in all cases of this kind, it is natural to catch at every circumstance where there is even an apparent contradiction. But I am bound to tell you, what may perhaps occur to yourselves, that it is extremely possible, that a witness intending to tell the whole truth upon the subject-matter, concerning which several witnesses have been examined, may differ in collateral points, which are not essential, and do not bear upon the main subject of enquiry; but still, if the witnesses do differ, it is a matter which ought to be taken into consideration. The sound judgments of rational men will enquire, whether the fact upon which the difference arises, be essential and important, and of sufficient magnitude to

to mark a fallibility that can be relied on, or a disposition to falsehood, which should make you reject all that he has sworn. There is a variance marking the fallibility and a defect of memory in one witness or the other, and if such incorrectness appears even in collateral points, as would induce you to doubt that part which is essential, undoubtedly it will weigh much in the conclusion that you shall form.

But if it arise from equivocation in either witness, it bears close affinity to deliberate falsehood, it ought to go strong against the credit of the witness. You well consider, however, whether this difference between the witnesses arose from a different view of the transaction, in a matter that seemed not essential to the case of the prisoner, and by no means illustrative of innocence or guilt, and whether from a frail recollection by one witness, and a clear recollection in the other; or whether there was intentional falsehood in either. There are various gradations in accuracy of account and consistency of detail, from whence you are to draw the inference, as to the intention of the witnesses, and the degree of credit their evidence should have.

It is for you to judge upon all the circumstances of the case; but the most important fact for you to determine is, whether the prisoner was armed with a pike, in furtherance of the treason charged upon him; the fact of seeing him with a pike, rests upon the testimony of *Gallagher*; who, upon pursuing the prisoner, cried out, "here is a rebel with a pike," and whether that was said in the hearing of the prisoner, you will also determine. You have a serious task, when you are obliged to draw inferences from facts; and there are some facts upon which there is no controversy, as they rest on the concurrent, and consistent testimony of the witnesses to them; who swear that the advanced man of *Lieutenant Gouldman's* party, cried out, "there's a rebel with a pike!" and immediately commenced a pursuit, in which all the party join; the pursuit continues to the deal yard, where the prisoner is found at the instant, concealed under an heap of timber; a pike is found close to the place of his concealment, and on searching the deal-yard closely, no other person is found there. You have heard from the witnesses, how the deal-yard was connected with the depot, which was near to it; you have heard the account which the prisoner gave to account for his situation;

I have

I have stated the contradictions which have been relied upon leaving it to you to determine finally upon them, I will go to that which has been set up as a defence, (there his Lordship stated the evidence given by *Rourke*, and the other witnesses on behalf of the prisoner. He observed, that the evidence was of importance, not only in point of character, with respect to honesty, and continued laborious industry, but also to the merits of the present case; because it is not probable, that the prisoner had bestowed much of his time, in forming this general plan of conspiracy, which has been deeply laid, if he was regularly engaged in laudable industry: but it is my duty also to tell you, that although a man may not have been engaged in forming schemes which require much time, yet if he joins them afterwards, he may be equally guilty with the others in contemplation of law. I could have wished, that upon such a night, so eventful, attaching upon the scene where the prisoner lived, having been cautioned by his employer to go home, and having been apprized of the mischief which had begun to rage, before he left *Mary Carr's* house, he had so far taken care of himself, as to be able to account in any natural manner, for what he was doing between 9 and 12 o'clock. I wish for your satisfaction, that it was capable of proof; perhaps it was owing to the agitation of the time, that he lurked in some hiding place, where he remained, though he cannot prove it. I could wish he had brought the people of his lodging, for the time is of considerable extent, he was out at a late hour, and no account appears in evidence, but of the time he passed at the tailor's lodging, and the situation in which he was afterwards found. But it is for you to determine, whether the overt act charged against him, has been satisfactorily proved; you must be satisfied, that he bore a pike actually for the purpose of rebellion. It is impossible for a judge to presume to encroach upon the province of a jury, but it is his duty to say, that if you have a rational doubt, which prevents you from drawing a necessary and just conclusion, from all the circumstances of the guilt of the party, you undoubtedly should acquit him: on the contrary, if you see an accumulation of facts, carrying conviction to your minds, that this man was active in the rebellion you will convict him. I shall now conclude, with again bringing to your recollection,

that a doubt, rationally existing upon the case, should draw from you a verdict of acquittal, and I shall beg of you to retire with minds, cool and free from preconceived impressions, which belong to the history of the times, but which do not arise from the evidence of the case.

Lieutenant Goultman, called again, at the request of one of the jury who examined him.

Q. Did you search the timber-yard, so as to see whether there was any other man there ?

A. I went over the yard with my sword, and some of the men with me, as accurately as possible, and did not find any other man there.

The jury retired, and after deliberating for twenty-five minutes, returned a Verdict, *Guilty*,

At the same time recommending him to mercy, on account of the character given of him, by his employer.

He was then remanded.

And on Monday the 5th of *September*, he was put to the bar, and the Attorney General prayed Judgment against him.

Lord Norbury, then proceeded to pronounce the Sentence of the law---he expressed the pain he felt, at the performance of this part of his duty. He called to the prisoner's recollection, the favourable trial he had received---It was impossible that more attention could be paid to any case, or more caution used, to give the prisoner the advantage of every apparent contradiction in the evidence. The jury were men of excellent character, and clear judgment, who investigated the case with much patience, and discernment. Every man who heard the trial, must be fully convinced of the justice of the verdict---his employer had acted humanely towards him, he had cautioned the prisoner on that night to go home, and had now come forward at the last time, to testify in his favour. But his advice was not followed ; and it appeared from the prisoner's evidence, that while the rebellion was raging, and shots firing around, the prisoner was enquiring with cool indifference for a pair of small-clothes---that was made the colour of excuse---because from the time he left the tailor's till, he was taken with a pike, he had full time to escape, and to act in participation with the loyal men who surrounded him---instead

of which he fled and concealed himself---his life was spared by the brave and gallant man who secured him. The consciousness of guilt which made him a coward, was contrasted with the valour and mercy of the soldier. There was no doubt, that the prisoner was one of that number, who meditated massacre and murder, and it might well be seen, what would be the progress of the provisional government; when it was preceded by such cruelties as were perpetrated in the contest. His lordship hoped, that all who had engaged in the premeditated mischief would be deterred from persisting in their crimes, and many doubtful characters might be rescued from delusion---the innocent would be secured, and the people permitted to sleep tranquilly in their beds. Scarcely four years had elapsed, since a general pardon was passed, for offences of this kind. The conduct of government since had been a continual chain of clemency, with more beneficence towards the lower order of the people, than has been witnessed in any other country. But it is vain to compromise with crimes--and lenity to them becomes cruelty to the public. His lordship expressed his hope, that the people would take warning by the severe examples which were made, and after entreating the prisoner to pass the remainder of his time in penitence and prayer, and to offer up a devout heart to the father of all mercy, he pronounced the sentence in the usual form.

Counsel for the Crown,
Same as in the former cases,

Crown Solicitors,
T. and W. KIMMIS.

Counsel for the Prisoner;
MR. MAC NALLY.
MR. C. BALL.
Agent,
MR. L. MAC NALLY,



R E P O R T

OF THE

PROCEEDINGS

IN

Cases of High Treason.

SPECIAL COMMISSION.

Monday, September 5th, 1803.

Judges present:—Lord NORBURY, Mr. Justice FINN-
CANE, Mr. Baron GEORGE, and Mr. Baron DALY.

WALTER CLARE was put to the bar for trial:—On
Wednesday, the 31st of August, he was arraigned
upon the following indictment:—

County of the City of } THE Jurors of our Lord the
Dublin, to wit. } King, upon their oath present,
that *Walter Clare*, late of *Thomas-street*, in the city and
county of the city of *Dublin*, subject of our said Lord the
now King, not having the fear of God in his heart, nor
weighing the duty of his allegiance, but being moved and
seduced by the instigation of the Devil, as a false traitor
against our said Lord the now King, his supreme, true,
No. VI. B lawful

lawful and undoubted Lord, the cordial love and true and due obedience which every true and dutiful subject of our said Sovereign Lord the King, towards him our said Lord the King, should bear, wholly withdrawing, and contriving and intending the peace and common tranquillity of this kingdom to disquiet, molest and disturb, and the Government and Constitution of this realm to change, subvert and alter, and our said Lord the King from the Royal state, title, honor, power, Imperial crown and Government of this kingdom to depose and deprive, and our said Lord the present King, to death and final destruction to bring and put, he the said *Walter Clare*, on the twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, wickedly and traitorously, did compass, imagine and intend, our said Lord the King, then and there, his supreme, true and lawful Lord, of and from the Royal state, crown, title, power and government of this realm to depose and wholly deprive, and our said Lord the King to kill and bring and put to death.

And that to fulfil, perfect and bring to effect his most evil and wicked treason, and treasonable imaginations, and compassing aforesaid, he, the said *Walter Clare*, as such false traitor as aforesaid, on the said twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, maliciously, and traitorously did conspire, confederate and agree together, and to and with divers other false traitors whose names are to the Jurors aforesaid unknown, to raise, levy and make a public and cruel insurrection, rebellion, and war against our said Sovereign Lord the King within this united kingdom of *Great Britain* and *Ireland*.

And afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, the said *Walter Clare*, as such false traitor as aforesaid, in further prosecution of his treason and treasonable purposes as aforesaid, did arm himself with, and did bear and carry a weapon called a pike, with intent to associate himself to and with

with divers other false traitors, armed with guns, swords, and pikes, whose names are to the said Jurors unknown, for the purpose of raising, levying, and making insurrection, rebellion, and war against our said Lord the King, and of committing and perpetrating a cruel slaughter of, and amongst the faithful subjects of our said Lord the King within this kingdom.

Anthat afterwards, to wit, on the said twenty-third of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of *Dublin* aforesaid, the said *Walter Clare*, as such false traitor as aforesaid, with a great multitude of persons whose names are to the Jurors unknown, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords, and pikes, being then and there unlawfully and traitorously assembled and gathered against our said Lord the King, did levy, ordain, and make public war against our said Lord the King, against the duty of the allegiance of him the said *Walter Clare*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

And the Jurors of our said Lord the King upon their oath do further present, that the said *Walter Clare*, being a subject of our said Lord the now King, and not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the Devil, and entirely withdrawing the love and true and due obedience which every subject of our said Lord the King, should and of right ought to bear towards our said Sovereign Lord the King, and wickedly devising, and intending to disturb the peace and public tranquillity of this kingdom, on the twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, unlawfully, maliciously, and traitorously did compass, imagine, and intend, to raise, and levy war, insurrection, and rebellion against our said Lord the King within this kingdom. And in order to fulfil and bring to effect the said traitorous compassing, imaginations, and intentions last mentioned, of him the said *Walter Clare*, afterwards to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign

reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with swords, guns, and pikes, being then and there unlawfully, maliciously and traitorously assembled and gathered together, against our said Lord the now King, most wickedly, maliciously and traitorously did ordain, prepare, levy and make public war against our said Lord the King, his supreme and undoubted Lord, contrary to the duty of the allegiance of him the said *Waler Clare*, against the force of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

The Prisoner pleaded *Not Guilty*, and said, he was ready for his trial. He was now put to his challenges, and the following jurors sworn, after one upon the panel was set by on the part of the Crown, and fifteen challenged peremptorily by the Prisoner.

William Murray,	John Stanly,
George Binns,	Nathaniel Caldwell,
Francis Kirkpatrick,	James Chambers,
George Beauman,	Robert Morgan,
William Tenant,	William Cromie,
John Clarke,	William Howard.

Mr. O'GRADY opened the Indictment.

Mr. ATTORNEY GENERAL,

My Lord, and Gentlemen of the Jury,

We shall offer to you, on the part of the crown, sufficient evidence to establish, without leaving any doubt that a rebellious insurrection existed in this city upon the 23^d of *July* last, and we shall then apply ourselves to the particular part which the prisoner appears to have taken in it. The evidence against him is, that an honest and loyal man, looking out of his window upon that calamitous night, saw a great body of persons armed with pikes, and the prisoner and another person, also armed with pikes, in conversation with each other—one expression proved to have been made use of was, "This is our night—we will work pleasantly."

→From

—From which of them this proceeded, I do not exactly know;—in point of law it is equally criminal in both; because if they were all collected upon a common confederacy and design, the expressions of one are evidence against all concerned—and you are to collect the guilt of each from all the circumstances which occurred.

The overt act charged against the prisoner is, that he took up a pike for the purpose of aiding in the conspiracy. In point of law it is not necessary, that he should have done one act with the pike, or have used a single expression; though they may be additional evidence to satisfy your minds as to the purpose for which the instrument was taken up. But when we consider the nature of the instrument, and that it is criminal to make them, and that men armed with such instruments committed great atrocities, on the same night, it is a reasonable conclusion, that a man arming himself with such an instrument, and encouraging others by his presence, was guilty of treason.

I should further observe, that after the military had fired two vollies, the main body of the rebels having been thrown into confusion, and the game being then a little desperate, the prisoner threw down his pike, rapped at the door where he lived—called to a person by name—it was opened, and he went in;—therefore there is no reason to suppose he was there by compulsion, if that should be his defence.

Gentlemen, we shall submit this evidence to you, and it will be for you, upon the whole, to draw a fair conclusion from it.

EDWARD WILSON, Esq. *Examined.*

Gave the same testimony as upon the first trial. *Vide No. I. page 37. Kearney's Case.*

LIEUTENANT COULTMAN, *Examined.*

Gave the same account as before. *Vide No. I. page 48.*

JOHN FORREST,

Examined by Mr. TOWNSEND.

Q. Where did you live, on, or before the 23d of July last?

A. At No. 9, in Thomas-court.

Q. Is

Q. Is that court a broad or a narrow place?

A. It is a narrow street.

Q. How far is it from *Thomas-street*?

A. It runs into *Thomas-street*, close to St. Catherine's church.

Q. Is it in the city or county of *Dublin*?

A. It is in the city, in that part.

Q. Do you know the prisoner?

A. I do by eye-sight.

Q. How long have you known him?

A. For a couple of months before that.

Q. Do you mean before the 23d of *July*?

A. Yes.

Q. What particular opportunity had you of knowing him?

A. He lived exactly opposite to me, and was every evening at the door, or looking out of the window.

Q. Did you know his person perfectly well?

A. I did.

Q. Did you see him on that night?

A. I did.

Q. Where?

A. In *Thomas-court*.

Q. Where were you at that time?

A. Sitting in my own room.

Q. How high from the street?

A. One pair, not above ten feet.

Q. At what time was it?

A. To the best of my opinion it was after ten.

Q. Was the prisoner armed or unarmed?

A. He was armed.

Q. With what instrument?

A. A pike; a long pole with a spike at the end of it; and there was another person whom I knew also.

Q. Were there any other persons there?

A. There was a number of others.

Q. Was that other person whom you knew armed?

A. He was.

Q. Were the rest of the people armed?

A. They were.

Q. What arms had they?

A. They had all pikes.

Q. Did

Q. Did you see any other kind of arms?

A. No.

Q. Was there any one of the party in particular conversation with the prisoner?

A. Yes.

Q. Which of them was that?

A. The man whom I knew.

Q. How near were they to you when in conversation?

A. They were in the middle of the street, walking up and down, and it is very narrow.

Q. What did you hear said?

A. One of them said to the other, "This is our night, and we will work pleasant."

Q. Had they pikes at this time?

A. Each had a pike on his shoulder.

Q. When you heard these words, could you be sure which of them spoke?

A. I could not.

Q. Are you sure the words were spoken by one or the other of them?

A. It could be no other, for at that time there was no other near them.

Q. Had there been any shots fired before that time?

A. There was one.

Q. In what direction, as you could judge, was the shot fired?

A. It was in *Thomas-street*.

Q. Did you hear any shots soon after the words were spoken?

A. I did.

Q. Did they appear as single shots, or as volleys?

A. They appeared to me as volleys.

Q. How many volleys did they hear?

A. Two.

Q. Did you hear any more?

A. No more; I heard different shots, but no volley.

Q. On the firing of these shots, what did the prisoner and his comrade do?

A. They all ran different ways.

Q. What do you mean by all?

A. All the men there.

Q. What

Q. What did the prisoner do?

A. He and the other man came to the lodging door, one laid down his pike against the wall in a sloping direction against another door, and the other laid his pike upon the pavement; one called out, "Biddy, Biddy, open the door."

Q. (*By the Court.* When did you first see the prisoner that night?

A. Not till I saw him in arms.

Q. How long did you see them there?

A. They were half an hour altogether walking up and down, I never took my eyes off them.)

Q. What did these two persons do?

A. One of them said, "Biddy, Biddy, open the door."

Q. Can you be sure which of them said that?

A. I cannot.

Q. At which door?

A. At the door where they lodged.

Q. (*By the Court.* Did they both lodge in the same place?

A. They did.)

Q. How soon was this after speaking the words you mentioned?

A. Some time; it was not immediately after they spoke the words; but it was after the last volley was fired.

Q. Was the door opened?

A. Certainly it was.

Q. And they went in?

A. They did.

Q. Did you see the prisoner again that night?

A. No more.

Q. (*By the Court.* How long have you known that other person?

A. The same time I knew the prisoner.)

Q. Had they lived long in that house?

A. They might, but not to my knowledge.

Q. But they lived there you say, two months?

A. They did.

Q. Is he a tradesman?

A. He worked at a distillery;—as I understood they both worked there.

Q. During

Q. During the half hour you saw them walking up and down, had they their pikes?

A. They had.

Q. In what direction did the people run when they heard the fire? Was it towards the fire?

A. No, it was from the fire; they run in different directions; some down an alley; some down *Rainsford-street*.

Q. Had they pikes?

A. They had.

Cross-Examined by Mr. MAC NALLY.

Q. After the volley was fired, the mob, you say, ran some one way and some another?

A. Yes.

Q. They did not all run from the direction of the fire?

A. There were various directions; they did not all go one way.

Q. Did many of them turn to get into *Thomas-street*?

A. It was straight enough to *Thomas-street*; but they went from *Thomas-street*.

Q. How long have you lived in *Thomas-court*?

A. A year and a-half.

Q. The prisoner is a labourer and works at a distillery?

A. I do not know; I heard so.

Q. You have seen him often?

A. I have.

Q. Was he a regular working man at his business? was he always a sober man?

A. I cannot say; I never sat with him; many men in drink walk without staggering; I never smelt his breath.

Q. How soon did you give information?

A. As soon as I could.

Q. Did you give information for a fortnight?

A. I did, before the prisoner was taken.

Q. How soon?

A. The second day.

Q. To whom?

A. To my shopmates.

Q. Were they yeomen?

A. They were.

Q. Why did they not take up the prisoner?

A. They were in dread and fear.

Q. Do you mean to say, that the yeomen who turned out to defend the city were afraid?

A. They were afraid of me.

Q. Why of you.

A. That I would be in danger.

Q. Why did you not go to a magistrate?

A. I always depended upon the yeomen taking him; they put it off one night after another, till I went to Captain *Bloxham*.

Q. Did you go to him before or after great rewards were offered?

A. It was before; I did not do it for reward.

Q. How soon did you go to Captain *Bloxham*?

A. In ten days.

Q. Was that before the rewards were offered?

A. I believe it was.

Q. Upon your oath, do you not know that rewards were offered three days after the 23d of July?

A. Upon my oath I do not know it.

Q. On your oath, did you never see a proclamation offering rewards, posted in *Thomas-court*?

A. I never saw it in *Thomas-court*.

Q. Where did you see it then?

A. I saw it posted in *Barrack-street*, on the opposite side from where I was walking.

Q. And could you read it from the opposite side?

A. No, but they told me it was a proclamation to take up all persons who carried arms that night.

Q. Can you read and write?

A. I can.

Q. Did you see the proclamation offering a reward of one thousand pounds?

A. I did not.

Q. Did you never hear there was a proclamation offering a reward of a thousand pounds for the murder of Lord *KILWARDEN*?

A. I did not.

Q. Did you hear there was a proclamation offering a reward of 50l. for every one of the first hundred persons convicted for being concerned in the rebellion?

A. I believe, I did.

Q. Did you see the proclamation?

A. I did not.

Q. But

Q. But you heard of it?

A. I did.

Q. The main body of the people you say ran away from the street?

A. They did.

Q. The two persons, of whom you say the Prisoner was one, did not go out of the street with them; so that they took the first opportunity they could get.—

A. To house themselves.

Q. I was not going to ask you that—do you know, I was going to ask you that?

(The Witness smiled.)

Q. You seem to make merry of it?

A. You would not have me cry.

Q. Sir, I would have you conduct yourself with decorum. Did the two men go into their own house?

A. They did, after the last volley.

Q. Could they tell whether these volleys were from the mob or the army, could you tell which it was?

A. I could certainly tell that it was not from the mob; they could not make such a fire.

Q. How came you to know how these men were armed?

A. I saw them in my window.

Q. Did you hear that these who were in *Thomas-street* had musquets and blunderbusses and pistols?

A. I did not.

Q. Did you hear of their firing at all?

A. I did not.

Q. Did you not hear of an officer being shot with a blunderbuss?

A. I did not, I heard he was piked.

Q. Did you not hear he was shot?

A. I heard various stories; but a man is not to believe every thing he hears.

Q. Did you never hear the officer was killed by a shot from a blunderbuss?

A. I never did.

Q. Did you hear that Captain WILSON was fired upon by the rebels?

A. I did not.

Q. Did you hear they attacked them with pikes?

A. I certainly did.

Q. But

Q. But you did not hear there were shots fired?

A. Not by them.

Q. Did you hear he killed a rebel with a shot?

A. I did not.

Q. At what hour did you hear the volleys?

A. About ten as I think.

Q. Do you believe that the rebels were armed to attack the King's government and his troops?

A. I have no doubt of that.

Q. And you say as soon as they found the business begun, they ran away; was any attack made upon them?

A. Not in *Thomas-court*.

Q. How many were there?

A. About one hundred pikemen in arms to the best of my recollection.

Q. Did they not prepare arms and come armed for the purpose of waging war against the crown?

A. I am sure of it.

Q. And the moment the flight began they ran away?

A. They did.

Q. The Prisoner got into his house, you say; do you not believe he did not intend to fight?

A. What put a pike in his hand.

Q. Did you see him make use of it?

A. Only marching with it on his shoulder, walking up and down, as a sentry.

Q. What was he guarding?

A. I took care not to ask him.

Q. Was he guarding that one hundred men?

A. I would not venture to ask him.

Q. Is not a sentry put to guard something?

A. And would you have me put my head out of the window to ask him—Oh! I am obliged to you.

Q. How came you to know that the words were uttered which you spoke of?

A. There was a broken pane of glass.

Q. Do you put your ear out?

A. No, I had an eye, and an ear at the window.

Q. Then how can you know that the Prisoner spoke?

A. I do not say he was the person.

Q. How could you distinguish him and the other man from the rest?

A. There were no people with them at the time.

Q. Was

Q. Was it after the volley they spoke?

A. It was after the first shot.

Q. Your head was not through the window, how could you see the people?

A. I was only ten feet above the ground.

Q. But how could you see as you remained at the window?

A. Very clear.

Q. It was a dark night?

A. It was, but I could see them.

Q. Whereabouts was the lamp?

A. There was none.

Q. Were you here when Mr. *Wilson* was examined?

A. I was not.

Q. (*By the Jury.*) You say the night was very dark?

A. Not so dark, but I could discern and see them, being my neighbours, and being armed.

Q. Was there a lamp near to them?

A. Not one.

Q. (*By the Court.*) Can you name any of persons to whom you gave information two days after?

A. Yes: I told it to *Thomas Price*, *Robert Boyd*, and some others.

Q. Are any of them here?

A. None of them.

Q. Was any person in the room with you?

A. My children, and a man who was flat upon his mouth and nose, hiding himself, for fear of being killed.

Q. Did he see them?

A. No.

Q. Did he know what passed?

A. No.

Q. Did you tell him?

A. I did, and my children told him.

Q. How old are your children?

A. My eldest girl is fourteen.

Q. Did she see what passed?

A. She did; she was at another window, and the rest of the children were crying for fear of being killed.

Q. Did she see the Prisoner?

A. She saw him going into his house.

Q. (*By*

Q. (*By the Jury.*) Could you see the number of one hundred persons without putting your head out.

A. I could, when they were opposite to me.

Q. (*By the Court.*) Did the crowd pass back and forward.

A. They pass'd up and down, that is the way I guess them to be 100 persons.

Q. (*By the Jury.*) Where do you live in *Thomas-court*?

A. At No. 9.

Q. What distance is that from *Thomas-street*?

A. About as far as this table from the wall—about eight yards.

Q. Is your house near *Rainsford-street*? near one of the angles?

A. It is.

Q. What pane was broke in the window?

A. The middle pane.

Q. How high was the window from the floor?

A. About ten feet.

Q. (*By the Court.*) Did any person in the house but your daughter see the transaction.

A. No other.

Q. (*By the Jury.*) Did you mention to the man who was in the room, what you heard the people say?

A. I did, to *John Haughton*, he made his escape to my house.

Q. Did you tell the prisoner's name?

A. I did.

Q. How was the prisoner dressed?

A. In a grey jockey coat.

Q. (*By the Court.*) Is *Haughton* here?

A. He is not.

Q. Is either of your shopmates here?

A. No.

Q. Where are they?

A. Working in the Foundling Hospital.

Q. State their names?

A. *Thomas Price*, *Robert Boyd*, and *James Murray*.

Q. Where is your daughter, who is 14 years old?

A. At my place in *Watling-street*.

Q. What

Q. What number?

A. No. 40.

Q. Have you changed your lodging?

A. I did for fear of mischief.

Q. How soon after?

A. A fortnight after.

Q. (*By the Jury.*) Can you point out in Court, any colour like the coat which you saw upon the Prisoner.

A. I do not see any thing like it.

Q. (*By the counsel for the crown.*) When you saw *Alderman Manders*, had you any conversation with him upon the subject?

A. I swore the information before him.

Mr. MAC NALLY. Your Lordships will look into the informations, and see when they were sworn, and what the import of them are?

Q. (*By the Jury.*) When you saw the Prisoner from the window, did you know him immediately?

A. I did.

Q. Did he march with the people, or remain by himself?

A. He did not march with the people, he and the other man remained mostly together.

Q. Did he stand sentry at his own door?

A. No, he did not.

Q. (*By the Court.*) Did any of the other people appear to be sentries?

A. They walked to and fro, but did not go far from the place.

Q. Could you distinguish the countenances of the rest of the pikemen who passed under the window?

A. I could, many of them, for they came very often close under the window.

Q. Was it by the light of a lamp you distinguished them?

A. No.

Q. Was the night very dark?

A. It was not so dark but I could see the faces that were near me.

Q. Did

Q. Did you ever see the grey coat before?

A. I cannot say.

Q. Were there any of the others dressed like him?

A. They were almost all of them in grey.

Mr. MAC NALLY. Was there any man there with a brown coat?

A. Many men might.

Q. Had any man a coat the colour of your own?

A. I dare say there were numbers; but to swear to the colour of what was upon every man's back I cannot.

Q. Was it a long or a short coat?

A. It was a long coat down to his feet.

Q. (*By the Court.*) You say there were several others with pikes walking back and forward; what number were there?

A. About one hundred.

Q. Did they all appear as sentries?

A. I cannot say; they walked to and fro.

Q. Were they as much sentries as the two men you have mentioned?

A. No; these two men never walked out of my sight; the others did walk out of my sight.

Q. Did the rest appear as sentinels like the two you spoke of?

A. I cannot say; they walked up and down, and went through the street at each end.

Q. Were the two men from your sight at all?

A. They were not five minutes from my sight during the whole time the people remained.

Q. (*By the Jury.*) Could you put any part of your head through the broken pane?

A. I could easily.

Q. Did you put your face out that night?

A. I did several times.

Mr. MAC NALLY. I thought you denied that?

A. You asked me whether I looked through the window with the sash up, which I did not.

Q. (*By*

Q. (*By the Jury.*) At the time you saw the Prisoner, did you put your head out?

A. No.

Q. When you put your face out, could you see up and down the street?

A. I could.

Mr. MAC NALLY. Did you not say to me, that you were not fool enough to put your head out?

A. I was not fool enough to raise the sash and look out.

Q. You said you had your eye and your ear to the broken pane?

A. I did.

Q. And you said you would not put your head out?

A. I would not.

Q. Then what do you mean by saying that you put your head out?

A. I put my face out, and could put my head, when there was an opportunity, by their backs turning.

Q. (*By the Court.*) Could you see far when you put your face out as you say?

A. I could, far enough.

Mr. ATTORNEY GENERAL. From the turn which the cross-examination has taken; we wish to examine as many witnesses as we can; I have given directions that the daughter of the last witness should be sent for, and also the several persons with whom he worked, and whom he mentioned, and in the mean time we will examine Alderman Manders.

ALDERMAN MANDERS,

Examined by Mr. ATTORNEY GENERAL.

Q. Do you know *Ferreß*?

A. I do.

Q. Did he lodge examinations before you, which related to the Prisoner?

A. He did.

No. VI.

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Q Can

Q. Can you recollect whether he swore examinations before you the first time he informed you of the matter, or afterwards?

A. It was some time after, but I do not recollect how long; I believe it was a week after.

Q. State what occasioned the delay, if any circumstance did occasion it?

A. He told me he was afraid of being murdered.

Q. When he first came to tell you the story, he was not impatient to swear?

A. By no means, he told it rather reluctantly.

Q. Did you ask him to swear examinations?

A. I believe I did, and he postponed it;—he said he would on a future day, giving that as a reason, that he was afraid.

Q. Was *Clare*, the Prisoner, under an arrest at that time?

A. I believe not; I am pretty sure he was not; for upon getting the information, I applied to Capt. BLOXHAM, and some of the LIBERTY RANGERS, to arrest him.

Q. Was the Prisoner in custody when the informations were sworn?

A. He was; upon getting the account I did, I had the Prisoner arrested, as I said, and then the witness swore the informations.

Q. Do you recollect whether any thing passed between you and the witness respecting rewards?

Mr. MAC NALLY. My Lord, I object to this question; the magistrate cannot give in evidence any conversation which passed between him and the witness, in the absence of the Prisoner.

Mr. ATTORNEY GENERAL. The cross-examination went to shew that the witness was influenced by reward to give the information; but, however, the objection to the question answers my purpose.

Lord NORBURY. I should be glad to hear the point argued, if the objection be made, and the question persisted in: This gentleman is called to shew the consistency of the witness's account, and there was a long cross-examination,

examination, as to the point of reward, and if the counsel for the crown have a right, by the laws of the land and the rules of evidence, to corroborate his testimony, by evidence of the general consistency of his story, and not to the very point upon which he was cross-examined, I should be very glad to hear the matter discussed.

Mr. Justice FINUCANE. I did not think the matter required discussion, because the Attorney General seemed to me to withdraw the question, thinking the objection made answered his purpose.

Mr. ATTORNEY GENERAL. I did not withdraw the question because I thought it an improper one, but upon the persuasion that the objection which was made to it, answered the purpose which I had in putting it; but after what is passed, I think it better the matter should be enquired into; it may be in favour of the prisoner.

Mr. MAC NALLY. Then, my Lords, I object to the question upon decided authority. The credit of the witness is not impeached; in course of cross-examination, as in all other cases it has been attempted to be shewn, from the manner in which the evidence is given, that the witness may not be completely consistent or accurate in his testimony, but the impeachment of the credit of a witness is where you attack the moral character or turpitude of the man, shewing that he ought not to be believed upon his oath.

Mr. Baron DALY. The position you lay down is broadly this, that you cannot impeach a man by cross-examination.

Mr. MAC NALLY. No, my Lord, the principle is this, when you ask a man, was he charged with felony, or any other offence, that goes to impeach his personal credit.

Lord NORBURY. You will please to recollect that you asked the witness, whether it was not after hearing of the rewards that he came forward to give information.

Mr. MAC NALLY. But, my Lord, I carefully avoided asking the witness, whether it was in consequence of the reward that he came forward; if I had asked that question, it would go to impeach his credit:—but I shall state

state an authority for my conduct, having the sanction of one of the learned barons who now preside, and so far back as the case of *Leary*, it was the opinion of counsel, upon consultation, that hearsay evidence could not be given; but I made a search into the state trials, and I find that such evidence has been usually admitted: the case of *Leary* occurred before Mr. Justice CHAMBERLAINE, Mr. Justice FINUCANE, and Mr. Baron GEORGE;—the moral character of *Lawler*, the witness for the crown, having been impeached, the question was, whether he had denied the existence of a God, and whether he was not charged as a thief, in stealing certain articles: This was shewn by his cross-examination, and also by witnesses swearing, that he did not deserve credit upon his oath. Mr. George Cowan was called to prove, that the witness, in disclosing the facts to him, told word for word, as he had afterwards deposed in court. It is true, that upon these trials, the witness was impeached directly,—so in the case of *O'Brien*, the questions went to his moral character.

Lord NORBURY. Surely, if a man be asked upon his cross-examination, questions which are pointed directly to himself, with a view to shew that he had been induced by the hope of reward to do that which otherwise he would not have done, can any thing go more strongly to affect his religious or moral character?

Mr. Justice FINUCANE. The course of cross-examination must have been intended for some purpose: It strikes every body, that an impression was intended to be made by it, and the objection which is now made, is founded upon this, that impression is made, and any attempt to remove it, ought to be resisted.

Mr. MAC NALLY. My Lords, to shorten the discussion, I will wave the objection.

Mr. ATTORNEY GENERAL. The Court and the Jury having ruled the point, Mr. MAC NALLY gives the weight of his authority to the decision.

Examination resumed.

Q. Was any reward held out to him?

A. In my presence nothing of the kind was mentioned, either previous to his examination or since.

Q. Did

- Q. Did he shew any eagerness to give information?
A. No, rather a reluctance.

Cross-examined by Mr. MAC NALLY.

- Q. If he told you he expected a reward, would you refuse his informations?

Mr. Justice FINUCANE. It is a decided case, that such an expectation would not render him incompetent.

Alderman Manders. He said, he acted from principle; that he was bred and born a Protestant in the North, and that he and all his sort would shortly be massacred.

- Q. (By Mr. ATTORNEY GENERAL.) You have heard of the Proclamation issued by Government?

A. I have.

- Q. Can you say, whether the information which was sworn by *Forrest*, was before or after that?

Q. I cannot recollect.

FELIX BRADY, *Esq.* Examined.

Gave the same evidence upon his direct examination, as in the former cases. *Vide No. 1. page 42, Kearney's case.*

Cross-Examined by Mr. MAC NALLY.

- Q. It was a dark night?

A. It was.

- Q. It was so dark, that the rebels got close upon you before you distinguished them?

A. They were so close to me, that I did not observe them, but from the flash of the pan, shewing those persons upon the left.

- Q. You could not have known they were there, but from the flashes?

A. Except from finding a man with a pike, as I stated before; but I could not distinguish his face at the distance of four yards.

- Q. Nor the colour of his coat?

A. I cannot say that I might have known the colour of a coat.

Q. But

Q. But you could not see whether it was a fine or a coarse grey coat?

A. I would not mind that.

Q. (By Mr. SOLICITOR GENERAL.) How long did you remain out that night?

A. When I went to the Barrack in James's-street, I found the guard drawn out in the front of it.—I remained there some time, and the commander of the forces sent word that he wished to see me; but before that I had returned to *Thomas-street* with an additional party.—We found several pikes, all of them bloody; several marked with blood down the iron part, and the rings, and some of them two three feet down the handle. This circumstance escaped my observation on the former trials.

Q. Did the night grow brighter or darker as it advanced?

A. It grew brighter after eleven.

Extracts from the Proclamation were then read. Vide No. I. page 54, *Kearney's case*.

Mr. ATTORNEY GENERAL informed the court, that the messengers who had been dispatched for Captain *Bloxham*, and *Forrest's* daughter, had returned without finding either of those persons at home.—The other persons were expected.—He therefore closed the case for the crown, reserving a liberty to examine those persons, in case they arrived during the trial.

Mr. MAC NALLY.

My Lords and Gentlemen of the Jury,

This is a case which is exclusively for the jury to determine—No material point of law has arisen upon which I can have occasion to address the Bench.

Gentlemen of the jury, in submitting the case of my client to your consideration, I shall have little to observe upon; you will have no intricacies of evidence to bewilder your minds, or to detain you for any considerable time in contemplating on the verdict which results from the facts sworn to, and which in my humble judgment, without presuming to dictate, but concluding from the impression made upon my understanding, will be a verdict of acquittal.

The

The question is, whether from the evidence given to you, the prisoner be guilty of the crime charged upon him, by the indictment? The crime in the abstract is conspiracy, conspiracy, I admit, of the most heinous tendency. Conspiracy with numbers of persons unknown, to raise, levy, and make public war, insurrection and rebellion against his most gracious Majesty, our sovereign lord the King, within this kingdom; and this, gentlemen, is laid as an overt act, that is, an open deed, to shew the purpose and intent of the conspirators to be that, which you must consider most nefarious and diabolical, a means of deposing the sovereign of this realm, from his state, power, and government; and to depose and deprive him of his sacred office of King—and to bring and to put him to death—or, in the legal phrase of the statute, upon which the prisoner is indicted, the statute of the 25th of *Edward* the third, “to compass and imagine the death of our lord the King.”

But, gentlemen, though the general charge is, that the prisoner did compass and imagine the death of our lord the King, that is not the point to which your attention is to be directed. The points for your consideration are the overt acts laid in the indictment, by which the furtherance of the intent to compass and imagine the death of the King is made evident, for the statute says, the intent must be upon sufficient proof of open deed, by people of the prisoner's condition, that is, proof by witness deserving credit, of open facts in which the prisoner participated, sufficient to convince the jury of his traitorous intention to bring the King to death; or, as courts by construction have laid down the law of this species of high-treason, to bring the King into such a situation or predicament, as may eventually endanger his life.

The overt act or open deed, to which I conceive the evidence in this case applies is, that this young man, at the bar, on the night of the 23d day of *July* last, (when undoubtedly a rebellion raged in *Dublin*, as has been proved) in prosecution of the treason charged, “did arm himself
“with, and did bear and carry a pike, for the purpose of
“raising and making insurrection and rebellion and war
“against our Lord the King within this realm.”

Gentlemen, I conceive this is the charge, to which I ought as counsel for the prisoner, apply his defence; it will be for you to determine whether, from the whole of the evidence you have heard, it appears to you plainly and beyond

beyond doubt; that the Prisoner entertained the wicked imagination of the heart imputed to him; for, if he did, the law certainly has said, and I am not to contend here against the rule, that he is implicated in the same degree of guilt as if those imaginations had been carried into effect and actual execution.

One witness only has given testimony to the fact of carrying the pike, and it has been determined that at common law one credible witness is sufficient to support an indictment for high treason; in *England* there must be two; but there, two are made necessary by statute. This witness, gentlemen, is *John Forrest*, and it is your peculiar duty to judge of the share of credit which that man is intitled to— You will judge of his credit by taking into consideration the manner of his giving his evidence, as well as the evidence itself; for the credit of a witness may be materially affected, or it may be totally destroyed by his manner of delivery. His voice, his countenance, his gestures may be circumstances to impress suspicion of the facts he utters; on the minds of a jury. So, if you find him inconsistent; or prevaricating, or obtruding his own sentiments or opinions, you ought to suspect his veracity. An excess of zeal, a solicitous reserve, an affectation of candor, and innumerable other appearances, may render his testimony questionable, of course create a *doubt* and insure an acquittal: Now, I submit to you, gentlemen of the jury; that this witness, even if you should think his evidence uncontradicted, by the testimony of Lieutenant BRADY, appears in such a questionable shape, that I will venture to assert that, in the nature of things, you cannot conclude, consistent with conscience, that the prisoner is guilty. However strong your suspicion may be, that will not sanction a conclusion of guilt: no; gentlemen, should you even believe, or rather should you even be convinced that the Prisoner was in *Thomas-court* on the night of the rebellion, that will not amount to a conclusion of guilt, unless the evidence also satisfies you, that he was there acting as a traitor in the manner described by the overt act, and in furtherance of the purposes charged in the indictment.

But supposing the credit of the witness *Forrest*, not to be impeached, consider the probability of what he has sworn. Consider whether it be probable that a man, situated as the witness was, could have seen and could have heard, in the manner he has described. Mark his situation

—He

—He stood in a window, with his head at a broken pane of glass; the window ten feet above the street, so that he must have sworn to the countenance of the man, though he had no means of seeing, but by looking down upon him—standing in that position, with his face at the window, his head not intirely out, peeping like *Tom* of Coventry, he also takes upon him to swear to words which he imputes to have been uttered by the Prisoner.—Gentlemen, remember there was not sufficient light for the witness to discern a man's features; remember he could only see down on his head—and yet, he swears to the countenance of this man, and even to the colour of the coat he wore—nay even to the texture of that coat, for he swore not only that it was a grey coat—but a coat of coarse grey cloth. The eyes and the ears of this witness must be of most extraordinary organization indeed! for he sees and distinguishes colours and textures in the dark, and distinctly hears and recollects an individual voice articulating in a tumultuous assembly of armed men.

Gentlemen, when you compare this witness's evidence, in one particular circumstance, with the honourable and unbiassed testimony of Lieutenant *BRADY*, you will find yourselves bound by the imperative dictates of conscience to acquit the Prisoner. That officer, whose humanity illustrates the purity of his mind, and the intrepidity of his heart, tells you mildly and truly, that “the night was so dark he could not perceive where the rebels were—and that though the atmosphere grew lighter, as morning approached, yet, at the time he was in *Thomas-street*, there were several persons taken prisoners and put between the divisions for safe custody, some of whom made a great noise” (which, gentlemen, must have attracted the lieutenant's attention towards them) “yet he could not distinguish them the next morning, so as to identify their persons or their faces.” Compare this with the obstinate and positive, and therefore the suspicious, accuracy and positiveness of *Ferrest*, and ask your hearts, ask your consciences, to which witness you ought to give credence.

I am convinced from the fair and candid manner in which these prosecutions have been carried on, that the counsel for the crown, could they with propriety deliver their opinions, would assure you they would much rather in a doubtful case, as the present case is, that there should

be an acquittal than a conviction.—Is this case doubtful? I put the question now not to your feelings, but to your understandings.—The prosecution depends upon the evidence of a single witness, swearing to the identity of a man, under the circumstances I have mentioned. This evidence, I say, is uncorroborated by the testimony of any of those persons to whom he says he communicated the matter as confidential persons, or by any of those who he states to have been in his room at the time. His daughter is not brought here by him—is that omission accounted for? Her being sent for, and being from home, only increases suspicion, that if she was here, and spoke truly, she must contradict her worthy father. His fellow workmen are not here; nor is captain *Bloxham* produced, to whom, it is alleged, he communicated what he saw in the dark. So that upon the whole of the case, the evidence given by the crown can only amount to this, if to so much, that you, gentlemen of the jury, may fairly and justly *suspect* that the prisoner was one of the banditti who committed treason on the 23d of July last. The counsel for the crown would not, *they* could not put the question against the Prisoner stronger to you than I have done, —and they must admit that evidence amounting only to suspicion is evidence of doubt—is evidence for acquittal.

The law of evidence clearly and decidedly lays down this rule, and the rule is just; that whenever a doubt exists in the minds of the jury, they should incline to the prisoner, and acquit. This rule has been repeatedly mentioned, and never controverted;—but however often it may have been mentioned, counsel are obliged, in every new case where it applies, to repeat it;—and I repeat it now, gentlemen, because it applies in favour of my client most efficiently, and because some of you might not have been present, upon former occasions, when my Lords, the Judges, have promulged it, in the greatest extent and amplitude of its benignity—by charging the jury to recollect, that in all cases, where the life of a man depends upon the verdict of a jury, and a rational doubt is impressed upon their minds, either as to the credit of the witnesses, or the perpetrators of the facts sworn to in evidence, they ought to acquit.

If ever there was a charge rendered doubtful, by the circumstances produced to support it—it must be the present. This defence principally emanates from the evidence given

given on the part of the Crown—but I have some material facts to state on the part of the prisoner.

I am instructed to state, that the young man at the bar will satisfy you, by the testimony of creditable witnesses, that he was in his own lodgings on the night of the insurrection. He does not deny the fact of his living opposite *Forrest's* house, but he alleges, and I am instructed he will prove, that on that night he was at home, and not in the street as sworn to. Further I am warranted to assert, on his part, that not only on that night he was in his lodgings, but that he appeared publicly in the streets every day, and returned home every night, down to the time of his arrest, which was a full fortnight after the 23d of *July*.

You will see, gentlemen, that he did not fly, and his not flying, after the 23d of *July*, I submit to you as negative proof of his innocence, which ought to impress great weight on your minds. Flight is in itself an offence—it is contempt of public justice, arguing consciousness of guilt; and being, in some degree, considered evidence of criminality; consequently where the party charged does not fly, it should operate in his favour.

Therefore supposing the witness, *Forrest*, not to be impeached in point of veracity, you will consider whether he may not have been mistaken. If the cross-examination has impeached his credit (and the Counsel for the Crown must have conceived it did, for they thought it necessary to support him by calling Alderman *Manders*)—the Alderman's evidence will reduce it still more. The Alderman was called on to shew that the witness came to him without any apparent zeal, and that he did not mention a word about reward, or expecting reward; but how does this set him up? If he intended to take away the life of a man, would he be such an idiot as to tell the magistrate he was instigated to inform against the prisoner by expectation, or the hope of a reward?

Under all these circumstances, I think this is a case for the humanity of a Jury to interfere. We are not in *Ireland* as in *France*, where accusation insures conviction, and where execution succeeds, quick as the thunder follows the lightning's flash. The man upon his trial has the benefit of a jury, a guard which the constitution of this realm has placed for defending the life of the subject against

against the charges of the public accuser. In our Courts of Justice, the duty of the Counsel for the Crown is not to seek conviction, but to investigate truth; and if the evidence of the charge produced by them be not sufficient to convict, by being insufficient to convince, it is your duty to acquit. You cannot convict but on incontrovertible conclusion of guilt;—there is no such conclusion here; and therefore I sit down clear in my own mind, that your verdict will establish the innocence of the Prisoner.

Mr. ATTORNEY GENERAL. Some of the persons who were sent for, have now arrived.

Mr. MAC NALLY. I must object to any witness being now examined for the Crown—their case was closed—I feel extremely ill and languid—and it might be of serious consequence to my client, should any thing occur that might require further observations from his counsel,—consider, my Lords, I stand alone, and without aid.

Mr. SOLICITOR GENERAL. The witnesses may be examined in reply to the Prisoner's case, therefore no objection can be to their being examined.

Mr. Justice FINUCANE. We think it should come as original evidence.

JAMES MURRAY was then produced on the part of the Crown.

Examined by Mr. SOLICITOR GENERAL.

Q. Are you acquainted with *John Forrest*?

A. I am.

Q. You are a carpenter?

A. Yes, sir.

Q. Had you and *Forrest* been in the habit of working together before the 23d of July?

A. We had, a long time.

Q. Where were you both employed before that day?

A. At the *Foundling-house*, in James's-street.

Q. Do you recollect seeing *Forrest* the next morning, upon the 24th?

A. I did.—I was in his room that morning.

Q. Had

Q. Had you any conversation with him, or did he say any thing respecting the transactions of the night before?

A. He told me there had been a great parcel of men at his window with pikes?

Q. Did he mention whether he knew any of them or not?

A. Generally, he did not—but he mentioned one that faced his own door, or lived opposite to him.

Not Cross-Examined.

Q. (By the Jury.) Did he mention any name to you?

A. He did—but I do not recollect.

Q. Did he mention more than one man?

A. No—I did not hear him say, that he knew more than one man—I cannot be positive, not thinking I should be questioned about it.

Q. He said the man lived opposite to him?

A. He did, and pointed to the house.

Q. Was there any pane of glass broke in the window of his room?

A. I did not observe it?

Q. Did he say how he saw them?

A. He said, the pikes reached up to the window, the room being low.

Q. (By the Court.) Did he mention more than one person that he knew?

A. I cannot say—I do not recollect.

Q. (By the Jury.) Did he say, why he knew him—or what his dress was?

A. He did not.

Q. How broad is Thomas-court opposite Forrest's house?

A. It is a narrow street there, not so wide as from this table to the wall.

Q. (By the Court.) Did he give any reason for his own conduct touching any person whom he saw there?

A. No—only talked of the man he saw.

Q. Did he tell this to any other people?

A. I cannot say, what he told to other people

THOMAS

THOMAS PRICE,

*Examined by Mr. PLUNKET.*Q. Do you know *John Forrest*?

A. I know him since he became a working man along with me.

Q. Had he been working with you before the 23d of July last?

A. He had.

Q. When did you see him afterwards?

A. Next *Monday*, working together.

Q. Had you any conversation about the disturbance?

A. We had.

Q. What did he say?

A. To the best of my recollection, he told me, he saw two men, who lived opposite to him, lay their pikes against the wall, and call to the maid to let them in.

Q. Did he mention their names?

A. I do not recollect that he did.

Q. Are you positive this was on *Monday*?A. I am not; but it was either *Monday* or *Tuesday*.

Q. Are you certain it was not later?

A. I am.

Q. Did he at that time take any step towards giving information before a magistrate?

A. Not to my knowledge.

Q. Did he express any reason concerning it?

A. He seemed to be willing to have such people punished—but I believe him to be timid.

Q. What countryman is he?

A. A North-countryman.

Q. How did he appear to you to be timid?

A. About having them spoken of, or his name brought in question concerning them, as he lived just opposite to them.

Q. How long did he continue at that lodging in *Thomas-court*?

A. I do not know how long; but I know he left it, as soon as he got a room convenient.

Q. Why did he leave it.

A. I really believe, from being afraid to live in it.

Q. In what situation are you?

A. A working carpenter, at the *Foundling-house*.

Q. Are

Q. Are you a yeoman?

A. I am, since the middle of the last rebellion.

Q. Do you know *Murray*?

A. I do.

Q. Is he a yeoman?

A. He was, in the last rebellion—He was a serjeant in the yeomen.

Q. Were you a person of that description in whom *Murray* might repose confidence?

A. I believe he communicated to me, what he would not to others.—But as to *Murray*, I cannot say.

Not Cross-Examined.

Here the case closed on the part of the Crown—and the Prisoner produced his witnesses.

James Fleming,

Examined by Mr. MAC NALLY.

Q. Where do you live?

A. In *Thomas-court*.

Q. Where do you work?

A. With Mr. *Roe*, of *Marrowbone-lane*.

Q. Where did the Prisoner lodge?

A. In my room in *Thomas-court*.

Q. Did he lodge there on the 23d of *July* last?

A. He did, and long after, till he was taken.

Q. When was that?

A. On the Friday se'nnight after.

Q. Was he in your room on the night of the 23d of *July*?

A. He was.

Q. At what time did he come in?

A. Between eight and nine.

Q. Do you recollect a mob being there?

A. I have no recollection of a mob there till after he came in.

Q. Can you say there was no mob till then?

A. I can't say for that, as I did not leave my room.

Q. When you returned home, was there any mob in the street?

A. No.

Q. How soon after did the prisoner come?

A. About an hour,—we have no watch or clock.

Q. Did

Q. Did he sleep there that night?

A. He did.

Q. Did he work after that night with Mr. Ree.

A. He did, during the whole time.

Q. Was he in bed before the pikemen came into the street?

A. I cannot certify for that, not being out.

Q. Was he in before the noise began?

A. We make no great account of noise upon a Saturday night, in that part, there being a number of working people out.

Cross-Examined

By Mr. ATTORNEY GENERAL.

Q. When did you hear of this shocking disturbance?

A. Not till next morning.

Q. What!—not till the next morning?

A. I heard the racket, but I did not know the sense of it.

Q. Who told you the sense of it?

A. I went out about six in the morning and saw what it was.

Q. Who first told you of this shocking business?

A. I can't tell, for I heard it, going through the street.

Q. You cannot tell who informed you?

A. I cannot tell.

Q. How many lived in your house?

A. Another man and the Prisoner.

Q. What was the name of that other man?

A. Daniel Kearney.

Q. Where is he?

A. In the Prevot.

Q. Was he within the whole night as well as the Prisoner.

A. He was.

Q. You are sure he was not out that night?

A. I can certify that.

Q. What women were in the house?

A. The Prisoner's wife and mine, *Elinor Fleming*, and *Mary Clare*.

Q. Was there any other woman?

A. No other.

Q. By virtue of your oath?

A. There was not.

Q. Did

Q. Did the house belong to you?

A. No.

Q. Were there no other people in the house, but those you have mentioned?

A. I can only speak of my own room.

Q. Was there no other woman in the house?

A. There was one woman, who is here.

Q. What is her name?

A. One *Ann Judge*—her husband was there also.

Q. What other persons were there?

A. One room more was occupied, and I cannot say, who were in it.

Q. At what hour did the Prisoner come home?

A. Between eight and nine.

Q. Who opened the door for him?

A. I cannot say which it was, his wife or mine, but it was one or other.

Q. What work does he follow?

A. Common labouring work.

Q. You were sure he was in bed at nine?

A. He was; I can certify that; if put to a necessity, I could say it was before nine.

Q. Perhaps it was half after eight?

A. I cannot say for that.

Q. Is it usual for persons to go to bed so early in that part of the town?

A. I cannot say;—sometimes it is later, according to the settlement at the pay-table.

Q. I thought you said, you did not mind noise at that part of the town?

A. No; we do not.

Q. Is it usual to have murders committed, and soldiers firing in that neighbourhood, without noticing it?

A. There was no murder committed in that street.

Q. Did you not hear shots fired?

A. I did, after I went to bed, but I thought it might be some rejoicement.

Q. Was there a woman of the name of *Biddy* in the house?

A. Not that I know of.

Q. What do you believe?

A. I do not know her name.

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Q. Where

Q. Did not the prisoner tell you, the reason he came home so early, was to avoid the disturbance?

A. He said no such thing.

Q. Did you know there was a disturbance?

A. Not till the next morning.

Q. Did the prisoner bring in a pike?

A. I never saw one with him, nor did he say one word that night more than usual.

Q. Perhaps you never saw a pike?

A. Not till the next morning.

Q. (By the Court. Did the Prisoner get up to look out of the window?

A. He never stirred to get up till the next morning.)

Q. (By the Jury. What time does Mr. Roe generally pay his workmen?

A. About seven o'clock.)

Q. What time were you paid?

A. I was not paid in the yard.

Q. Were you paid that evening?

A. I was.

Q. At what time?

A. About six.

Q. How was the prisoner dressed that evening?

A. He was dressed in his usual working clothes.

Q. What coloured cloth?

A. A grey coat.

Q. Was it a large wide coat, such as working people usually have?

A. It was a small tight frock coat—not a tight coat either—much such a coat as this upon me.

Q. Had he a large coat?

A. No larger than this upon me.

Thomas Maher,

Examined by Mr. MAC NALLY.

Q. Where do you live?

A. With Mr. Roe, of *Margaret-street*;—I am clerk to him.

Q. What business does he follow?

A. He is a distiller.

Q. Do

Q. Do you know the prisoner?

A. I do.

Q. Did he work with Mr. Roe?

A. He did, for two years back,—one time he was absent, when business was backward, and he returned with a character from Mr. Hughes, and got the same employment again.

Q. Did you see him on the 23d of July?

A. I did.

Q. Did he work that day?

A. He did.

Q. Was he paid his wages?

A. He was.

Q. At what hour?

A. I am not allowed to pay them till after six o'clock; and they had surplus work, cleaning the yard, and other matters, that kept them till near seven; he was the last of forty-five men who went away.

Q. As he has worked so long with Mr. Roe, you can tell what character he has?

A. A very good one; and he brought a good character from other employers.

Q. Was he constantly at work?

A. A very regular, constant man.

Q. Did he work after the 23d of July?

A. He did, for a fortnight.

Q. Do you know Fleming?

A. I do.

Q. What character has he?

A. He is a very honest man.

Q. Is he deserving of credit upon his oath in a court of justice?

A. I think he is.

Q. How long is he working with Mr. Roe?

A. He is employed by Mr. Hendrick, the bricklayer, to whom I gave a return of the day labourers, and he is paid by Mr. Hendrick.

Cross-Examined by Mr. PLUNKET.

Q. Do you live with Mr. Roe?

A. Yes:—Not in the house with him.

Q. Where

- Q. Where do you live?
 A. In *Braithwait-street*.
 Q. Where is that?
 A. In the Liberty.
 Q. Is it near *Thomas-street*?
 A. No; but near *Cole-alley*.
 Q. Did you find the men anxious to get away on the evening of the 23d of July?
 A. Not more than usual.
 Q. You went home quietly, I suppose?
 A. I did not see any disturbance—no such thing.
 Q. Not even the next morning?
 A. No.
 Q. What became of you the next day?
 A. I went to business as usual and called a roll of my men—if any man is absent then, he is cut off part of a day.
 Q. Did the prisoner work every day?
 A. He did:—If he was ten minutes short, he would be cut off quarter of a day.
 Q. You heard nothing of the disturbance till next morning?
 A. No.
 Q. Nor had no suspicion of a disturbance that night?
 A. I had, from Mr. *Logie*, who told me there was something contrary that night, and bid me go to bed.
 Q. Who is Mr. *Logie*?
 A. He is in Mr. *Roe*'s employment.
 Q. You took his advice?
 A. I did.
 Q. And went to bed?
 A. Yes.
 Q. Because you were told there was something contrary?
 A. Yes.
 Q. And yet you had no suspicion of any disturbance?
 A. No.
 Q. At what hour did he tell you?
 A. I cannot say what hour; it was in the evening.
 Q. Is he here?
 A. No.
 Q. Do you know *Fleming*?
 A. I do.

Q. He worked there on the 23d of July?

A. I can't say—the book will tell.—(Here the witness produced a book containing the workmen's accounts.)

Q. Was he not a workman of Mr. Roe's?

A. He was.

Q. And Henry Weldon?

A. Yes.

Q. Where are they—are they now working with their employer?

A. Yes.

Q. Did they for a week after the 23d of July work there?

A. I will tell you in a moment upon looking into my book. (Here the witness inspected the book)—He worked on the 13th of August.

Q. Where was he on the week ending the 6th of August?

A. We often discharge men as strangers and take them back again.

Q. Where were those persons after the 23d of July?

A. I cannot say.

Q. Look at your book?

A. He was not there.

Q. Was either of them there?

A. They were not. You put me to my oath, and I have a poor recollection.—Tyrrell had got a liberty to go to the country some time before with two brothers—they had a little farm, and wanted to reap their oats, and they got a pass from a magistrate. It jogs my memory, and I recollect it—the time they were absent is deficient in the books.

Q. (By the Court. Was it on Monday the 25th of July he went?

A. It was.

Q. What magistrate gave him a pass?

A. I can't tell.)

Q. What became of Weldon?

A. Give me my book—it may jog my memory (after looking into it.) I do not see, that Weldon has returned since.

Q. Was

- Q. Was he returned, or not?
- A. I cannot say.—If he is not in the book, I think not.
- Q. That story about the liberty *Tyrell* had got, and going to reap the oats, you found in the book?
- A. No; but it jogged my memory.
- Q. Where is *Weldon* now?
- A. I do not know.
- Q. Have you no suspicion where he is hiding?
- A. No, I never enquired after him or any others.
- Q. How long did he work with Mr. *Roe* before that time?
- A. I cannot say:—he might have ten men to employ one day and dismiss them the next.
- Q. Did you hear *Weldon* was shot upon that night?
- A. I did not.
- Q. Where did he live?
- A. I cannot tell.
- Q. How long had he worked there?
- A. I cannot tell.
- Q. Can't you tell, whether he worked a year, a month, or a week?
- A. Not without the book.
- Q. Had he worked three weeks?
- A. I cannot say.
- Q. Would you not know him without your book, if he worked three weeks with you?
- A. I would.
- Q. Was he three weeks working there?
- A. I cannot say.
- Q. You have a recollection for *Fleming*?
- A. I have no recollection for him—he is paid and employed by others.
- Q. Was it from Mr. *Roe*, or you, that he got the small-clothes he had on?
- A. He did not get them from me—but I can't say, whether he got them from Mr. *Roe*.
- Q. Who gave him the black coat he had?
- A. I cannot say.
- Q. He is a hodman?
- A. He is these three years.
- Q. And is he enabled to purchase such a coat?
- A. I suppose so; he has thirteen shillings a week.
- Q. How

Q. How long has he had that black coat?

A. I can't say.

Q. Did you ever see it before?

A. I did the last day he was here.

Q. That is his *constant* dress then?

A. I suppose so.

Q. Did you ever see it before this Court sat?

A. I cannot say, I ever did.

Q. Do you not believe that he got it for the occasion of coming here?

A. I cannot account for that.

Q. Do you not believe it?

A. I do not.

Q. How was he dressed upon *Saturday* evening the 23^d?

A. He had a white coat, burned with lime and the traces of the hod upon his shoulder.

Q. What coat had the prisoner on?

A. He had a grey coat.

Q. Were you here the other day when the prisoner was brought up?

A. No;—Here is what brought me (*producing a Crown-summons.*)

Q. You have a summons and you would not have come to save the prisoner's life without it?

A. I would not;—I did not know whether his life was depending or not.

Q. You say the prisoner had a grey coat—was it a short or a long coat?

A. It was a short jacket.

Q. Has he no other coat?

A. No other working-dress during the week—he has a blue coat that he wore on *Sundays*.

Q. (*By the Court.*) When did you first hear of the disturbance?

A. On the next morning when I went to work.

Q. Was the prisoner there?

A. He was at work the next day.

Q. Do you work upon *Sunday*?

A. We often do work upon *Sunday*.

Q. At what hour was *Clare*, the prisoner up on the next morning?

A. At six o'clock I call the roll,

Q. Was he there at six?

A. I can't say.

Q. Was he there soon after?

A. I can't account for that.)

Q. (By Mr. ATTORNEY GENERAL. Look at your book and see whether *Clare* was not absent one day?

A. (After looking in the book)—He worked only six days—the others worked seven.

Q. *Clare* was not there upon *Sunday* at all?

A. He was not.)

Q. (By the Court. Do you now continue to say, that he came on the next morning to work?

A. He came on *Monday*.

Q. Then how came you to say, that he came on *Sunday*?

A. Not that *Sunday*.

Q. But you did say, he came that *Sunday*?

A. If I did, I mistook, because the book shews he was not there.)

Q. (By the Jury. Was the prisoner in the employment of Mr. *Roe* or in the employment of another person, who worked for Mr. *Roe*?

A. In the employment of Mr. *Roe*.)

Q. (By the Court. You say that the prisoner's ordinary dress is a grey coat—is that a long coat, or is it in the form of that you wear—a short coat?

A. I never observed upon their clothes.—They always strip when they go to work.

Q. Was his coat like a body-coat?

A. It was.)

(Here the evidence for the prisoner closed.)

Mr. MAC NALLY.

Gentlemen of the Jury,

I would cheerfully have left this case to your consideration, under the direction of the court, and have receded from my right of observing upon the evidence, if the SOLICITOR GENERAL had not signified his determination to reply, and animadvert upon what the witnesses on both sides have given in testimony. But this determination of the King's Counsel will, I trust, impress your minds with a favourable influence towards the prisoner; it certainly suggests, that, in the opinion of those who conduct the prosecution, the facts sworn to are not conclusive against him, and that you must have doubts upon the evidence, on the part of the crown; which calls upon their exertions to remove: but, gentlemen, though you will of course, pay every attention to whatever arguments the learned gentleman who is to follow me, may use for the purpose of supporting the indictment, yet you will still remember that jurors are not to find verdicts upon deductions, or upon inferences from arguments of counsel, but from clear and undoubted facts, or conclusions immediately resulting from those facts, and fully satisfying their consciences beyond all questions.——

I am not surprized, gentlemen, that one of you was under a mistake. I allude to a question put from the box by a juror, forgetting that you were trying the Prisoner, and not trying the two men who worked with him at Mr. Roe's. The cause of this mistake is obvious. You were amused for a considerable time with evidence irrelevant to the issue; with evidence respecting *Weldon* and *Tyrrell*, of their absence from work, and this for the purpose of attaching to the prisoner that conduct which was only imputable to those other men.

From this novel kind of evidence, you gentlemen will clearly divest your minds when you come to deliberate on the verdict you are to pronounce; for it would be a hard case indeed, and might bring the most innocent man to prosecution, and to trial, and perhaps to conviction and to punishment, if his conduct in life, and his life itself, were to be put in risque, by evidence applicable only to other men, into whose company, his profession, his trade, or
his

his avocation might accidentally lead him; and this is the case of my client's; the youth at the bar.

I am justified when I infer, what the argument of the learned SOLICITOR GENERAL may be, from the evidence by which it has been attempted on the part of the prosecution to implicate the Prisoner in the charge of treason.—The position will be this. The prisoner worked with other men, at Mr. Roe's—and two of these men having fled for a week, an imputation of guilt lies against all the men who worked for Mr. Roe, and of course against the Prisoner. It strikes me, however, as a much clearer position, and as the true position for your consideration, gentlemen of the jury, that if the flight of these men, is to be taken in evidence of their guilt, the Prisoner remaining at his usual place of abode on Sunday, and going to his work on Monday, is a proof of his innocence, and is as strong a circumstance as can be collected to support a presumption of that kind.

Gentlemen, you have remarked that great pains have been taken, on the cross-examination to lift the last witness. I suppose you never heard a man, baited as he was, deliver his testimony with more candor. He was asked, did he hear there was to have been a rising on Saturday night. Did the man suppress the fact? Did he attempt to traverse the question? No, he, without hesitation, or embarrassment, candidly acknowledged he did hear of it.—Something was insinuated to promote an idea that this honest man was brought here as a prepared witness—it failed. The Prisoner's agent has character sufficient to repel that idea. That gentleman would not prepare a witness for the value of a king's ransom—knowing the agent as I do, I am competent to bear this testimony to his honor and to his professional integrity. If the witness were brought into court, as a prepared witness, if he were implicated in the crimes and in the horrors of the 23d of July, would he have told you, when asked, had he heard there was to have been a rising on that night, that he had heard of it. He did tell you he had heard of it, and he told you the name of the person from whom he had heard it; a circumstance which as it might have tended to impeach himself and to implicate the person of whom he spoke, were he a witness prepared for the occasion, he would not have divulged. It was the answer of conscious integrity. If, I say, in such a case as this, he candidly answered to the prejudice

judice of himself, you have a right to take the whole of his evidence as matter of fact and of truth, unless the counsel for the crown produce a witness to rebut his testimony and thereby weaken or overturn that credit which he has now established, by the fairness of his evidence.

His dress has been considered worthy of animadversion.—He was asked, where he got his coat—and his credit was impeached because his coat was black—the colour of the garment was held out as a stain upon the integrity of the man.—“Where did you get that black coat” was asked with great gravity, accompanied by a very significant look, and answered satisfactorily, in my humble opinion, and without the least appearance of mental reservation.—Gentlemen, do you not concur with me in this—that it would be cruelty in the extreme, if one man should be hanged, because another man, whom he produced as a material witness, appeared in a black coat.

The witness, as he also admitted, is a labourer, but he had other means of adding to his income, exclusive of the fruits of his own manual industry. He occupies a room, and he has a wife who lets out beds for lodgers, and the profits arising from that, and the economical disposition of the man, not only enabled him to have a decent coat, but, even a waistcoat, and, what perhaps may be considered evidence against his credit, a whole pair of breeches. But the black-coat—where did he get a black-coat?—Probably some king's counsel, learned in the law, transferred it to his valet de chambre—and the valet de chambre having sported it till thread-bare, sold it to a cast-cloaths man, who having again sold it to a Plunket-street broker, my client purchased it from off a peg, and converted it into a gala suit to exhibit on Sundays and Holidays and other special occasions. Gentlemen, this may be the adventures of the black coat in question, but Heaven forbid a black-coat should be a symbol of dishonesty, were that the case, what would become of the learned professions, and above all, what would become of that character for veracity, for which my brethren of the bar, are so much celebrated.

Gentlemen, was it this circumstance that called for what you heard, a strict and minute examination of the prisoner's witnesses. They have been put to the ordeal of close and ingenious interrogations, if the thing was practicable, to entrap them; but they escaped that ordeal; they passed the burning plow-shares unscorched.

There has

has nothing appeared, and for the best reason, because nothing could appear from their answers, to convince your minds, that either the one or the other of those witnesses came here suborned. There is not the slightest impeachment to induce you to believe that the truth was not sworn by them. Every witness, the most respectable, and the most cautious and conscientious, may inadvertently slip into a trifling mistake;—but there is nothing in evidence before you of a contradiction, at least of any material fact.—One of you, gentlemen, put a question, and it deserves notice;—The prisoner had been used to work on Sundays at his master's shop;—the question from the juror enquired, whether he worked upon the Sunday succeeding Saturday, the 23d of *July*, or not?—It appears he did not;—and any man who recollects what kind of a Sunday that was, will not be surprized that the prisoner had not gone to work—will think him prudent and right in not going into the streets on a Sunday when the churches were not attended,—when the duties of religion were neglected, when universal terror pervaded every breast;—I say it is not surprizing, that on such a day the artizan was not found in his work-shop. But then, it has been observed, that by not working on that Sunday, as usual, he gave up his wages—What is the answer?—that no man could be so intent upon the earning of trifling wages, as to work upon Sunday the 24th of *July*, and in the neighbourhood too of the very spot where the Rebellion broke out, with atrocious and sanguinary fury, where resentment was alive, and the street crowded with the military. It is a fact that needs no proof, for it is notorious, that no man of the working orders of the people dare appear on that day in *Thomas-street*, or in any of the adjacent avenues, without danger to his life or liberty. Many, who appeared in working clothes, in other parts of the city, on that day, were taken into custody: and therefore, when the prisoner heard, on the morning of Sunday, that an insurrection had broken out on the preceding night, that murders had been perpetrated, and that numbers had been taken up on suspicion, he prudently determined not to go to work on that day, but to remain, where every honest man ought to be found on such an occasion, in his own lodging.

Gentlemen,

Gentlemen, I ought to apologize for detaining you so long,—and I would not have addressed you a second time, but that I would not have it understood by the poor boy at the bar, that I, for any ease of mine own, or from any other motive whatever, would derelict his cause. I stand alone in his defence—his poverty precluded him from procuring me assistance, and this raises an additional incentive to my exertions, as it will no doubt interest you in his favour. I am to consider myself, while acting for him, as standing in his situation, and it is my duty to urge every thing that can tend to the preservation of his life, with as much zeal, and with as much anxiety as I would for my own:—With all my mind, with all my strength, and with all my heart, I am bound to defend him;—and where that mind appears incompetent, and where that strength appears weakened, and where that heart appears unequal to the effort it would make, the Court, and you, Gentlemen of the Jury, will mercifully and amply supply the deficiencies. It is my hope that your verdict will this day convince the world, that these prosecutions are not carried on for the mere purpose of making examples; but that acquittal is as much the object as conviction; and the learned gentleman, who is to reply to what I have advanced, will, no doubt, consider, and accede to this opinion, that his duty goes no further than investigation, thereby to assist you in acquitting the innocent, as well as in pointing out that undoubted and unequivocal evidence, which Justice, and the Law, call for and require, to sanction a verdict that must inflict condign punishment.

I do not affect sincerity in declaring, I considered my client as an innocent man when I stated his case;—and, I am sincere, when I lay my hand upon my heart, and, from the unbiassed feelings of my conscience, declare, that nothing has since fallen from the witnesses, which in my apprehension can convince you of his turpitude, and thereby justify you to God, and to yourselves, in bringing in a verdict of guilty.

Mr. SOLICITOR GENERAL.

My Lords and Gentlemen of the Jury,

It is with much reluctance that I trouble you upon this occasion. But I feel that my duty calls upon me to observe upon the evidence, and to answer what was said by Mr.

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MAC NALLY in his first speech upon this trial. He said, that it was the duty of the counsel for the crown, when there was a doubt, to give up the prosecution. I admit that feeling should prevail in every man's mind, and am sure I can answer for my learned friend the ATTORNEY GENERAL, that he would have abandoned this case, if it came within the description which has been mentioned. If the evidence were not ample and sufficient to warrant a conviction, the prosecution would not be persevered in.—But when the evidence appears to be satisfactory it is our duty to call for that verdict which the justice of the country expects. And in a few observations, I trust, I shall satisfy you, that this case is as clear as any which has preceded it during this commission.

The only question for your consideration is, what part the prisoner took in the rebellion of the 23d of July? It is idle and unnecessary to draw your attention to the matter preliminary to that discussion, namely, the existence of the rebellion; for the existence of the rebellion is admitted by the prisoner's counsel, the only question, therefore, is, how far the prisoner took a part in it. To prove that, there is but one witness, *Forrest*; whether you look to his evidence—or the manner in which he gave it—or his conduct subsequent to the transaction, of which he gave evidence, the result is equally in favour of his veracity, and is sufficient to induce you to give implicit confidence to what he stated. He was situated in a window, where any obstruction that might arise from glass was removed—the street was narrow, and the prisoner was not a few minutes in view; but was half an hour passing and repassing—giving a full opportunity of ascertaining his features and his identity. It appears further, that he was separated from all the rest of the party, except one person—and therefore, gentlemen, you must be satisfied, that the witness had a full and fair opportunity of ascertaining the identity of the man, independent of the other circumstances which corroborate his testimony beyond all question.

Gentlemen, you will observe, that this man comes forward under circumstances, entitling him to attention.—He is not animated with zeal or warmth against the prisoner—for a considerable period of time he was subdued by fear, which was a natural circumstance, considering that his personal safety was involved in the discovery. And therefore it is impossible for you to suppose that a man apprehending

apprehending, that his own person was in danger, could from a corrupt motive, put his life more in hazard. It appears, that he not only stated the transaction accurately to the magistrate as he has done here; but he communicated the same facts upon the next morning to those in whom he could confide; his account upon all these occasions corresponded. He stated the circumstance of the prisoner rapping at his door and gaining admission—and though he was convinced of the identity of the prisoner, he was reluctant to swear informations, while the prisoner was at large, considering that by doing so, his life would be in danger. And therefore, gentlemen, no doubt can rest upon your minds, that he was prevented by such an impression upon his mind from coming forward, and not from any improper motive. The insinuation which was attempted by the cross-examination, that reward was the witness's inducement to come forward, is fully answered by the evidence of *Murray* and *Price*, to whom he told the transaction prior to any reward being offered or being in the contemplation of any man—and therefore the insinuation is not only answered and exposed, but you must see that it was suggested from a conviction, that the evidence was so strong, that if believed, it must be conclusive.

Gentlemen, if such be the impressions upon your minds, it must be doubly strengthened by the wretched attempt which has been made by the prisoner to account for his situation upon that night.—Feeling the necessity of doing so, he produced *Fleming* on his behalf. Put yourself for a moment into the situation of the Prisoner, and say whether any innocent man, accused of such an offence as this, would have contented himself with producing only one person from the house in which he lodged, when there are many others there, who could corroborate him, if he swore true.—The prisoner rests his case upon the testimony of one witness in opposition to the evidence on the part of the crown.—If his case were honest, it would be more strongly supported; but I will tell you the reason, why the other witnesses are kept back.—If his case were founded in truth, a consistent and uniform account would come from all the witnesses; but if a false and fabricated tale were made out, the second witness would contradict the first, and each succeeding one give a different narrative, and therefore the prisoner relies upon the testimony of a single witness, rather

than expose himself to the hazard of a contradiction. If all the persons in the house appeared, and you were satisfied they were credible witnesses, and that they contradicted the witness for the crown, I admit it would be a doubtful case, in which of course the jury would acquit the prisoner. —But when he produces a single witness only, that does not remove the impression made by the case for the crown, though proved in the material point, by one witness only.

But, Gentlemen, see what the testimony of the witness for the Prisoner is— he cannot meet credit with you, when his testimony is so replete with absurdity and inconsistency. Can you believe, that the witness went to bed at 9 o'clock ignorant of the outrage which was going forward; when if he cast an eye from his window, he must have seen men in arms, ready to commit those crimes, which were afterwards perpetrated.—No man, whether he was a loyalist, or a traitor, could shut his ears against the uproar which was raging in that neighbourhood.—The witness says, that upon *Saturday* evening, he went to bed between 8 and 9 o'clock.— You know, Gentlemen, that is an evening upon which the working people seldom go to bed so early—they generally indulge in excess.—However, shortly after the time he states he went to bed, the firing commenced as stated by Lieutenant BRADY,—the witness heard it, but he had no curiosity to enquire into the cause—he thought it was rejoicing!—Could any man listen to this account and suppose it to be true? It is an absurd and ridiculous reason—it is impossible it could be true. If they were loyal and decent people, that they could be lying in their beds, regardless of what was passing—when loyal men were alarmed for their safety, how do you account for the apathy of this witness and the companions of his house amidst accumulated horrors? If *Fleming* was an honest and fair man, would he not have felt some apprehension, and some anxiety to see what the matter was?—when others were filled with alarm and anxiously looking for safety, can you believe that this man would adopt a different conduct, if equally unconnected with traitors? He must have known of the insurrection, and the only way to account for his reluctance to stating the transactions of that night, is that his own conduct would not bear investigation, and therefore he covers the whole with a veil of silence, which if withdrawn, would probably, excite as much horror as any detail you have heard, therefore he professes ignorance of the subject,

in

in order to screen his own guilt and to avoid stamping himself with infamy. And therefore the witness was cross-examined as to all those circumstances which the counsel for the prisoner has endeavoured to throw into ridicule. The witness was interrogated respecting his dress because he has assumed a different appearance.—His heart suggested to him, that he was coming to tell a falsehood, and therefore it was necessary to give himself an apparent credit, by exhibiting a more decent habiliment than he usually wore.

But see how the prisoner's case is supported by the second witness—I mean the clerk of Mr. *Rae*—If ever there was a witness who destroyed himself, that witness accomplished it—his conduct evinced the falsehood of his story. He answered every thing most flippantly, which was enquired of by Mr. MAC NALLY—but when something was discovered from his books, he lost his recollection—he was then obliged to have recourse to his books, and being asked who were absent in the following week, he continued turning over the leaves, and finds his memory refreshed with facts which are not found in them—he tells a story of cutting oats, and obtaining a pass, which could not have happened—Where was a pass to be had upon the next morning?—Many days passed, before any truly loyal man took the slightest step towards obtaining a pass; and therefore this witness evidently tells a falsehood, by applying that, to the day immediately following the insurrection, which could not have existed for several days after. He had lost all recollection of the man, and the circumstances attending his conduct—he therefore refers to his book for information, and the moment he sees the name (for the book contained nothing more) he told the anecdotes you heard. Is that a probable account?—Or, rather, are you not convinced, that it is a false and invented story.

See, then, the remaining part of the case. Mr. MAC NALLY pressed upon you, that I would rely on the guilt of the prisoner, because two men who worked in the same yard fled from a conviction of their crimes. Gentlemen, if I did so, I should not deserve your attention. We did not examine the witness with such an absurd purpose—but by an examination into minute particulars, we endeavoured to detect the falsehood of the witness, and to shew you, that he could not stand that test which a fair and honest
man

man always can. We examined with regard to the other two men, to shew, that they, whom the witness had represented as peaceable and loyal men, were directly the reverse, and thereby exposing his total want of veracity.

Now, gentlemen, see what was the conduct of the witness for the Crown:—He spoke of the matter originally with reluctance, from an apprehension of personal danger; but he gave the same account which he has now supported, from the best motives, and from a conviction, that the person he accused, was guilty of treason. The witness for the prisoner tells you an incoherent and inconsistent story—which could be corroborated by many others, if true.—Why not produce *Mr. Roe*, his employer?—Why not produce *Logis*, who had early intelligence of this rebellion, which he had kept from the ears of the magistrates, and from Government—Why not produce them? Because they could not confirm the account.—Gentlemen, when you take all these circumstances into your consideration, you will see that this prosecution is far from what has been represented. It is not one which the Crown should abandon—but one that calls for your decision; not presuming to anticipate what it may be, I am sure it will be such as to give satisfaction to the country.—The learned counsel who preceded me, said, he expects an acquittal.—I do not condemn him for saying so, being concerned on behalf of the prisoner—But his opinion is not that by which you will abide;—you will be influenced only by the solemn obligation you have taken to decide according to the evidence. I might say, that this is a case which warrants a conviction;—but my opinion is not to weigh with you—But I shall strongly recommend to you, if you have a doubt, let the prisoner have the benefit of it—But it must be a rational doubt, exciting a feeling in your minds, that the prisoner might be innocent—But if you shall be of opinion, that the witness is not mistaken with respect to the prisoner, you know, your duty to your country is to convict him.

Your humanity and your mercy have been appealed to: Whether these qualities should prevail over the dictates of your judgment, and the principles of law, you will determine, and I am satisfied you will give such a verdict as will do equal justice to the prisoner, and the public at large.

Mr.

Mr. Justice FINUCANE.

Gentlemen of the Jury,

The Prisoner is indicted of High Treason, first, in compassing and imagining the death of the King, and secondly, in raising, levying, and making in conjunction with several men in arms public insurrection, rebellion and war against the King within this realm. This last species of treason clearly comprehends the other; for if the Prisoner be guilty of levying war and insurrection against the King, he is guilty of compassing his death, and it is to this last species of treason, that of levying war, to which the evidence in this case principally applies; and if the evidence be believed, there is full and clear evidence, that there existed upon the 23d day of *July* last, an insurrection and rebellion in the city of *Dublin*. It is not denied on the part of the Prisoner, and therefore as a good deal of the evidence was applied to that fact, it should seem to be unnecessary to trouble you with a detail of it. But if you have any doubt upon it, I will state the evidence to you.

(The Jury said: they had no doubt, and that it was not necessary for his Lordship to repeat that part of the evidence.)

Then, Gentlemen, the only remaining question is, whether the Prisoner had any hand or concern, or took any part in the Rebellion?—whether he was seen on that night with a pike in his hand and acting in the manner stated to you by *Forrest*?—for if he was and acted in that manner, there is no doubt of his guilt. The first witness examined to this fact, was *John Forrest*.—(Here the learned Judge read the testimony of *Forrest* and of the subsequent witnesses from his notes, and then proceeded.)

This, Gentlemen, is the whole of the evidence, and the point for your enquiry is, whether the Prisoner took any part in the rebellion, rests solely upon the credit which you give to *Forrest*.—He is the only person who saw the Prisoner. He stands, as to that fact, uncorroborated; though he was capable of being supported by direct evidence, namely by the testimony of his daughter, who was along with him at the time, and as he says, saw the Prisoner and the man along with him—she is not produced nor any cause assigned for her non-production; and therefore the
cause

cause rests upon the testimony of this man, unsupported and uncorroborated by *direct* evidence.

He is however supported by evidence which shall be laid before you, not indeed of a direct kind, but certainly deserving your attention. His evidence, on the other hand, stands liable to objection, as not tallying exactly with the evidence of Lieutenant *Brady*:—they differ as to the degree of light, and they differ as to the volleys, which were fired—Lieutenant *Brady* says, there was but one volley fired, and afterwards there was an independent fire,—but *Forrest* says, there were two volleys such as rebels could not fire, but was the fire of regular troops. How far *Forrest* might mistake an independent fire for a volley, or whether he could distinguish, that it could not be the fire of rebels, but the fire of regular troops, will be for your consideration, in weighing the degree of credit due to his evidence.

Now, Gentlemen, compare his evidence also with Lieutenant *Brady*, respecting the darkness of the night—Lieutenant *Brady* says, it was so dark, he could not distinguish a man's face at four yards distance—*Forrest* says, he distinguished the face of the Prisoner from the place where he was, ten-feet above the level of the street, as he looked through a broken window—Lieutenant *Brady* says, he could not distinguish any particular house in *Thomas-street*, so as to point it out again; he says, that where he had the contest with the rebels—he would only distinguish the rebels by their noise, and he actually surprized one rebel, by coming unawares upon him; so that there must have been a great degree of darkness in that case. How then *Forrest* could so accurately see the face of the prisoner as he walked up and down the street, will be matter for your consideration.

If you think he does not deserve credit, it must be upon the ground of untrue swearing. But before you come to that conclusion you will observe that his testimony is in some degree confirmed by Alderman *Manders*, who goes a great way to support him, though not directly.—There does not appear to be any pique, or malice, or jealousy, or anger between the witness and the prisoner, that could induce the former to tell a false story.—The Alderman tells you that *Forrest* came to him a week before he swore his examinations and told of this matter, but that he declined then swearing his examinations being as he said afraid of being murdered; but that when the prisoner was taken up, then

Forrest

Forrest swore the information.—This goes strongly to support him. He is also confirmed by the evidence of *James Murray* and *Price*, his shopmates, to whom he told the same story, that he has done this day upon the table—to the one upon the *Supply*, and the other upon the *Monday* following the rebellion. This contributes no doubt strongly to support his evidence; and it receives further strength from this circumstance, that the introduction of the evidence of *Price* and *Murray*, seemed to arise from his mentioning them upon the table, and their being there—upon sent for out of court, and certainly if that was the case, and that they gave their evidence without any previous communication with him, or knowing that they or either of them would be called forward, it adds greatly to the weight of his evidence.

Thus the case stands upon the objections to the evidence on the part of the Crown, and the support it receives.

There is evidence given on the part of the Prisoner which you will also sift and examine; and if you believe it, all probability of guilt will be removed from the Prisoner. It is the best evidence the nature of the case can admit of.—But if you believe it to be fabricated, it not only carries no weight in favour of the Prisoner, but makes much against him. But all that is matter for your consideration.—This I must also observe in favour of the Prisoner—that he continued a working man, openly and publicly for a fortnight afterwards, and he has a good character, which is only of weight according as you have a doubt upon the case.

Upon the whole, gentlemen, if you believe this man was armed with a pike that night, with the intention charged against him, he is guilty. But if you have any reasonable well founded doubt upon the evidence of *Forrest*, it is always the duty of a jury, in such a case, to lean to the side of mercy.

The jury retired, and after deliberating thirty-three minutes, returned a verdict—*Guilty*.

The Prisoner was recommended.

And on *Wednesday*, the 14th of *September*, he was brought up, together with five others, namely, *Donnelly*, *Farrel*, *Begley*, *Kelly*, and *Hayes*.—When Mr. *Baron GEORGE* pronounced sentence upon them all, after a very impressive and affecting exhortation.

The Prisoner *Walter Clare*, has been since respited.

Counsel

Counsel for the Crown.

Mr. Attorney General,
Mr. Solicitor General,
Mr. Plunket,
Mr. Mayne,
Mr. Townsend,
Mr. Ridgeway,
Mr. O'Grady.

Crown Solicitors,
T. and W. Kemmis.

Counsel for the Prisoner.

Mr. Mac Nally.

Agent, Mr. L. Mac Nally.

A

R E P O R T

OF THE

PROCEEDINGS

IN

Cases of High Treason.

SPECIAL COMMISSION.

Tuesday, September 6th, 1803.

Judges present:—*Lord NORBURY, Mr. Justice FINUCANE, Mr. Baron GEORGE, and Mr. Baron DALY.*

FELIX ROURKE, *John Killen and John McCann*, were put to the bar for trial:—They had been arraigned, on the 31st of *August*, upon the following indictment:—

County of the City of } THE Jurors of our Lord the
Dublin, to wit. } King, upon their oath present,
that *Felix Rourke*, late of *Thomas-street*, in the city and
county of the city of *Dublin*, Yeoman, *John Killen*, late of
Thomas-street, in the city and county of the city of *Dublin*,
Yeoman, and *John McCann*, late of *Thomas-street*, in the
city and county of the city of *Dublin*, Yeoman, otherwise
called *John McKenna*, subjects of our said Lord the now
No. 7. B King,

King, not having the fear of God in their hearts, nor weighing the duty of their allegiance, but being moved and seduced by the instigation of the Devil, as false traitors against our said Lord the now King, their supreme, true, lawful and undoubted Lord, the cordial love and true and due obedience which every true and dutiful subject of our said Sovereign Lord the King, towards him our said Lord the King, should bear, wholly withdrawing, and contriving and intending the peace and common tranquillity of this kingdom to disquiet, molest and disturb, and the Government and Constitution of this realm to change, subvert and alter, and our said Lord the King from the Royal state, title, power, Imperial crown and Government of this kingdom to depose and deprive, and our said Lord the present King, to death and final destruction to bring and put, they the said *Felix Rourke, John Killen and John McCann*, otherwise called *John McKenna*, on the twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, wickedly and traitorously, did compass, imagine and intend, our said Lord the King, then and there, their supreme, true and lawful Lord, of and from the Royal state, crown, title, power and government of this realm to depose and wholly deprive, and our said Lord the King to kill and bring and put to death; and that to fulfil, perfect and bring to effect their most evil and wicked treason, and treasonable imaginations, and compassing aforesaid, they the said *Felix Rourke, John Killen and John McCann*, otherwise *John McKenna*, as such false traitors as aforesaid, on the said twenty-third day of *July*, in the forty-third year of the reign of our said Lord the King, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with force and arms, falsely, maliciously, and traitorously did conspire, confederate and agree together, and to and with each other, and to and with divers other false traitors whose names are to the Jurors aforesaid unknown, to raise, levy and make a public and cruel insurrection, and war against our said Sovereign Lord the King within this realm.

And afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said

said Lord the King, with force and arms at *Thomas-street* afore-
said, in the city and county of the city of *Dublin* afore-
said, they the said *Felix Rourke*, *John Killen* and *John*
McCann, otherwise called *John McKenna*, as such false
traitors as afore-
said, in further prosecution of their treason
and treasonable purposes as afore-
said, did arm themselves
with, and did bear and carry certain weapons called pikes,
with intent to associate themselves with divers other false
traitors, armed with guns, swords, and pikes, whose names
are to the said Jurors unknown, for the purpose of raising,
levying, and making insurrection, rebellion, and war against
our said Lord the King, and of committing and perpetrating
a cruel slaughter of, and amongst the faithful subjects
of our said Lord the King within this kingdom.

And that afterwards, to wit, on the said twenty-third
of *July*, in the said forty-third year of the reign of our said
Lord the King, with force and arms, at *Thomas-street*
afore-
said, in the city and county of *Dublin* afore-
said, the
said *Felix Rourke*, *John Killen* and *John McCann*, otherwise
called *John McKenna*, as such false traitors as afore-
said, with
a great multitude of persons whose names are to the Jurors
unknown, to wit, to the number of one hundred persons
and upwards, armed and arrayed in a warlike manner, to
wit, with guns, swords, and pikes, being then and there
unlawfully and traitorously assembled and gathered against
our said Lord the King, did prepare, levy, ordain, and make
public war against our said Lord the King, against the duty
of the allegiance of them the said *Felix Rourke*, *John Killen*,
and *John McCann*, otherwise called *John McKenna*, against
the peace of our said Lord the King, his crown and dig-
nity, and contrary to the form of the statute in such case
made and provided.

And the Jurors of our said Lord the King upon their
oath do further present, that the said *Felix Rourke*, *John*
Killen and *John McCann*, otherwise called *John McKenna*,
being subjects of our said Lord the now King, and not hav-
ing the fear of God in their hearts, nor weighing the duty of
their allegiance, but being moved and seduced by the instiga-
tion of the Devil, and entirely withdrawing the love and true
and due obedience which every subject of our said Lord the
King, should and of right ought to bear towards our said
Sovereign Lord the King, and wickedly devising, and
intending to disturb the peace, and public tranquillity of this
kingdom, on the twenty-third day of *July*, in the forty-
third

third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, unlawfully, maliciously, and traitorously did compass, imagine, and intend, to raise, and levy war, insurrection, and rebellion against our said Lord the King within this kingdom. And in order to fulfil and bring to effect the said traitorous compassing, imaginations, and intentions last mentioned, of them the said *Felix Rourke*, *John Killen* and *John McCann*, otherwise called *John McKenna*, afterwards, to wit, on the said twenty-third day of *July*, in the said forty-third year of the reign of our said Lord the King, with force and arms, at *Thomas-street* aforesaid, in the city and county of the city of *Dublin* aforesaid, with a great multitude of persons whose names are to the said Jurors unknown, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, to wit, with guns, swords, and pikes, being then and there unlawfully, maliciously and traitorously assembled and gathered together, against our said Lord the now King, most wickedly, maliciously and traitorously did ordain, prepare, levy and make public war against our said Lord the King, their supreme and undoubted Lord, contrary to the duty of the allegiance of them the said *Felix Rourke*, *John Killen* and *John McCann*, otherwise called *John McKenna*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in such case made and provided.

They severally pleaded *Not Guilty*, and said, they were ready for their trial.

They were now asked, whether they would join in their challenges, which they refused, and thereupon *Felix Rourke* alone, was put to his challenges.

The following jurors sworn, after nineteen peremptory challenges by the Prisoner, and fourteen set by on the part of the Crown:—

William Moore,
James Brush,
John Stanly,
Luke Stock,
James King,
Benj. Simpson,

John Woodrooff,
Francis Warren,
Hickman Kearney,
Alex. Clarke,
John Kearns, Grafton-street.
Luke Connor,

Mr. O'GRADY opened the Indictment.

Mr,

MR. ATTORNEY GENERAL.

My Lords, and Gentlemen of the Jury,

I shall not trespass upon your time with many words; because it will be only necessary to give you a very short view indeed of the evidence which will be produced on the part of the Crown to substantiate the charge in the indictment.—By that indictment the crime of High Treason is imputed to the prisoner, and we shall first produce evidence to satisfy your minds, that a treasonable and rebellious insurrection existed in *Dublin*, upon the 23d of *July* last.—And as I think upon this part of the case, I am at liberty to say, that you cannot by possibility find any difficulty, I shall not trouble you with a statement of the evidence upon it, but will shortly proceed to those circumstances which will manifest the part which the prisoner acted in that treasonable insurrection, and the extent in which he participated in the design of the conspirators who contrived it.

Gentlemen, it will appear, that many persons were met by the rebels on that evening, and forced to take up arms, and apparently to join them.—One of these was a person of the name of *Mahaffey*, who had been formerly a private in the *Kildare* militia, and had afterwards followed the occupation of a pedlar.—A person of the name of *Ryan*, who followed the same occupation was in company with him,—about the head of *Dirty-lane*, or *Bridgefoot-street*, these two persons were met by the prisoner, and he, not being one of the ordinary rank and filemen, but of a superior description, and assuming a superior command, immediately called upon them to arm themselves with pikes, and to join his party. He threatened them with a blunderbuss, if they resisted for a moment.—Some little hesitation having appeared, he continued his threats; and being reinforced by another man who carried a blunderbuss also, *Mahaffey* and *Ryan* were hurried down *Dirty-lane* to the depot where the arms were collected, and both were obliged to take up pikes. *Ryan* is a very feeble man, labouring under a permanent infirmity. He was so agitated, that he became confused, and could not so accurately distinguish what passed as *Mahaffey*.—But if one half of what I am instructed they will depose, shall receive your credit, it will fully substantiate the guilt of the prisoner,

We

We did wish in this case, in order to save the public time, to have tried *Killen* and *McCann*, together with the prisoner, because the evidence is equally applicable to all.—But it was not thought prudent by the prisoner, to have his trial confounded with others, and by his declining to join in the challenges, we find it expedient to proceed against them separately.—But the prisoner is entitled to the privilege exercised, and no unfavourable conclusion should be drawn from the circumstance of his having insisted upon it.

Shortly after they were armed, and were proceeding from the depot, they met the bodies of some murdered persons,—a watchman, I think, among others.—The party was headed by the prisoner *Rourke*, who was sometimes called *General*, sometimes *Colonel*, and sometimes *Captain*.—All agreed that he had a considerable command, though the precise nature of it was not known to them all.

Upon coming up to the bodies, one of which was still groaning upon the ground, *Killen* with a blunderbuss fired into one expiring body, and *McCann* thrust his pike into another. While they were thus engaged, something more worthy of their gallantry appeared—a defenceless trooper happened to pass that way—*Rourke*, the prisoner, fired upon him with a blunderbuss, and both horse and man were killed.—*Rourke* called upon his men “to do their duty and free their country.”—He was then giving an example of that freedom to which he aspired, the privilege of killing the innocent and unoffending and putting the power of the country into the hands of assassins.—There was another leader amongst them with a military hat and scarlet uniform—they declared their object was the Castle, and that the city would immediately fall into their hands.

Gentlemen, I do not think it necessary to detail the facts more minutely; nor have I intentionally over-stated any thing—I was desirous only to render the evidence clear to your minds, rather than to make any impression upon your feelings.—The evidence is too clear to require any colouring, and you would not be influenced by any colouring it might receive; confine your attention to the evidence and draw your conclusion from nothing else—mindful of your oath and regarding your consciences you will discharge all former impressions, and pronounce such a Verdict as will do justice to the prisoner and your country.

EDWARD WILSON, Esq.

Examined by Mr. PRIME SERJEANT.

Gave the same account as upon the former trials.—*Vide* No. I. page 37—*Kearney's Case*.

The witness particularly mentioned, that one of the watchmen was killed at the head of *Dirty-lane*.

He was not cross-examined.

DONOUGH M'CREIGHT, Esq.

Examined by the SOLICITOR GENERAL.

Q. Do you recollect the 23d of *July* last?

A. I do.

Q. Did you arrive in this city upon that evening?

A. I did.

Q. How?

A. In the canal-boat.

Q. About what hour did you arrive?

A. I arrived in the harbour by the clock there twenty-three minutes before ten.

Q. To what place did you proceed from the harbour?

A. I walked the direct way down *James's-street* and into *Thomas-street*.

Q. When you arrived there, did any thing particular happen to you?

A. Yes, sir;—I met many people running, and saw a great deal of confusion. I asked what was the matter—some of them passed without answering me—others said, they did not know.

Q. Did you meet any who informed you what was the matter?

A. When I came near the narrow entrance into *Thomas-street*, I was surrounded by five or six men with pikes.

Q. Did they say any thing to you?

A. They all called out, almost at the same time—“Where I came from—what was my name—and what was my business”—without waiting for a reply:—I answered, that I was a country gentleman and had come to town
about

about law business, and that I was not a military man; for when I saw the pikes, I knew how the business was. One of them struck me at the time.

Q. With what?

A. With the handle of a pike. I was upon the flags at the time, and I fell against the wall of a house. Another asked me "Was I a friend"—I said, I was. I would have fled; but was so near the houses I could not escape. When I said I was a friend, one of them gave me a pike and desired me to fight my way; they then pushed me on with pikes, blunderbusses and pistols, and pushed me into the front.

Q. Then, they had blunderbusses and pistols?

A. They had, and some few of them had swords.

Q. The greatest part of them had pikes?

A. By much the greatest number.

Q. When you were placed in the front, where did you proceed to?

A. They walked down *Thomas-street*.

Q. What was the first circumstance which occurred afterwards?

A. I had been a considerable time with them, before they got as far as the Church,—between the entrance into *Thomas-street* and the Church, I saw a great number of pikes thrown out of a window upon my left hand, and such as had not pikes helped themselves there.

Q. What happened next?

A. When I came near the corn-market, between *Bridgefoot street* and the market-house, I saw a dragoon piked, on the flagged way;—he was on foot.—I was ordered to run, as if to join the foremost party, or that they saw the dragoon, for I did not see him till I got very near him, he fell close at my feet, and one of them put a pike across my breast, and desired me not to stir;—they piked him as he fell into the channel, and others as they came up drove their pikes into him.

Q. Was he moving at that time?

A. No, he was quite motionless; these who came up asked for his sword; "have you got his sword?" was the general cry among them.

Q. How long did you remain there?

A. Several minutes.

Q. What

Q. What happened then?

A. I was ordered to proceed to the market house, there was great confusion and noise, for they were not in one body but in various parties.

Q. When you got to the market-house, mention any thing that happened?

A. After some time spent in going back and forward a man appeared in a scarlet uniform, with a cocked hat and a sword drawn in his hand.

Q. Was he on foot or on horseback?

A. He was on foot. I forgot to mention that I saw a horse, as if wounded, crawling towards a gate way, and having heard that there was a dragoon and his horse piked, I suppose that was his horse.

Q. Was there a bridle and saddle on the horse?

A. There was.

Q. Did you observe any accoutrements or horse furniture?

A. I did not.

Q. When this man in scarlet uniform came up, what was he doing?

A. He seemed to be very active in going up and down, endeavouring to form them into one body, and encouraging them to come on; he said "that the castle would be their's, and that the town would fall in half an hour" After some little time, he observed that the rear did not keep up with the front and he said, they would be cut off by the army, if they came upon them; they replied "Damn the army, we are not afraid of them, we will fight them."

Q. That took place beyond the market-house?

A. Yes, in the narrow passage at *Cutpurse-row*.

Q. What number of people as well as you can judge did the party consist of?

A. I have not been in the habit of reckoning crowds of people; there might be from three to five hundred; they seemed to be a numerous party, and were spread out in the streets in great confusion.

Q. Did you observe any thing after they said they damned the army?

A. The man in the scarlet uniform said, the rear were not coming up, and he went to collect them; they went back from one to two hundred yards towards *Thomas-street*.

No. 7.

C.

Q. What

Q. What happened when they returned?

A. A carriage drove up and they stopped the carriage; they all collected about it; they asked the driver, who was in it? he answered, but I did not hear the name he mentioned; he was a postillion, and the horses were much frightened, and he could not easily keep them quiet.

Q. Was it a gentleman's carriage?

A. It was; they threatened the man, if he did not keep the horses quiet; he either got off the horses, or was knocked off; they opened both doors, and I could distinctly see two men and a lady sitting in the carriage; the horses got disengaged from the carriage, and I took advantage of that circumstance to get off; one of the party seemed to watch me, and having military boots on, when others came up, they used to say, "watch the fellow with the boots;" the horses making some confusion, I took advantage of it, as the only opportunity, for every avenue and lane was guarded by them, and when I turned towards any of these passages, I was asked who I was, and sent immediately back, saying that was not my ground, but to keep the middle of the street.

Q. On the occasion of the confusion you mention, did your effect your escape?

A. I did;—I went down *St. John-street*, and then went towards the *Barrack*; but I saw a crowd of men in the street, and I went from them towards the *Castle-yard*.

Not Cross-Examined.

Lieutenant COULTMAN,

Examined by Mr. TOWNSEND.

Gave the same testimony as before, *vide* No. I. page 48, *Kearney's Case*.

Not Cross-Examined.

Serjeant Thomas Rice,

Examined by Mr. O'GRADY.

Proved the Proclamation as before, *vide* No. I. page 53, *Kearney's Case*.

Michael

Michael Mahaffy,

Examined by Mr. PLUNKET.

Q. Turn about, look at the prisoner at the bar, and say whether you know him?

A. I do, sir.

Q. Were you in *Dublin* on the 23d of *July* last?

A. I was, sir.

Q. About how long had you been in *Dublin* before that day?

A. Something better than twelve months.

Q. How long had you remained in *Dublin* before that?

A. I remained till Christmas, when I went to *Drogheda*, and was in town continually from that time.

Q. What business did you follow?

A. I sold goods.

Q. In what manner did you sell them,—in a shop—or did you hawk them about.

A. I hawked them about?

Q. You were a pedlar?

A. I was.

Q. Where did you lodge?

A. In *Dirty-lane*, at *Mrs. Doyle's*.

Q. Had you any friend, or comrade that lodged there also?

A. I had.

Q. What was his name?

A. *John Ryan*.

Q. Were you employed that day in the usual manner of selling goods through the streets?

A. I was.

Q. Who was with you?

A. *John Ryan*.

Q. At what time did you return to leave your goods at home?

A. About eight o'clock.

Q. Did *Ryan* return with you?

A. He did.

Q. Did you leave your goods at your lodging?

A. I did.

Q. Did *Ryan* also?

A. He did.

Q. After

Q. After that did you and *Ryan* go out again ?

A. He did.

Q. What was the reason of your going out again ?

A. We were consulting about what we would buy, and we went out to walk to go to a woman, who owed *Ryan* some money.

Q. Did you go to her ?

A. We had walked part of the way, but thought it rather late it was too far off.

Q. After you had determined not to go to her, in what direction did you proceed ?

A. We returned towards our lodging.

Q. In what direction ?

A. From the market-house in *Thomas-street*, towards *Dirty-lane*.

Q. What happened then ?

A. I was stopped by *Felix Rourke*.

Q. Do you mean the prisoner at the bar ?

A. I do.

Q. Had you seen him before ?

A. I had about six weeks before.

Q. What did he do ?

A. He ordered me to go down *Dirty-lane*, and when I stood on my foot to know the reason of it, he drew a blunderbuss from his bosom, and said he would blow the contents through me, if I did not go smartly; he drove my comrade down in like manner.

Q. What did he do to your comrade ?

A. He gave him a punch in the back and drove him down in like manner.

Q. Did any other man come to his assistance ?

A. There did a man about 5 feet 6 inches, armed with a blunderbuss and we saw a great crowd coming from the *Lane* with arms; we thought to make our escape, when the other man who came up cocked a blunderbuss and swore he would shoot us.

Q. What did you and your comrade do in consequence of that ?

A. My comrade was drove down and *Felix Rourke* had a suspicion that I would run away and he took me by the collar; my comrade had a foul stomach, and began to vomit near a wall.

Q. Was

- Q. Was he subject to any disorder?
- A. He is subject to the falling sickness, and he has had it three times in the gaol since.
- Q. What happened afterwards?
- A. As soon as I got down to where the men were piking——
- Q. Whereabouts was that?
- A. Mostly opposite *Marshall-lane*—he let me go and he ordered his men “to their duty and free their country.”
- Q. You say, they were piking—what do you mean by that?
- A. They were piking two men; I saw the body of one, and the head of another; and they piked them, and I heard them groan.
- Q. Was this at the time *Rourke* desired them to do their duty, and free their country?
- A. Yes sir, that was the very time.
- Q. Did you see the faces of any of the other persons so as to know them?
- A. I did; I saw a man, who was called *John Cullien*, and another of the name of *John McCann*.
- Q. Had you seen those persons before?
- A. I had.
- Q. What did you see them do?
- A. I saw *Cullien*, just as *Rourke* let me loose, dart his pike into the body of one of the men, who was lying, and in a moment I looked over and saw *McCann* fire into the body of the man, whose head I had seen, and *Cullien* said, “we have done their business,” or “their business is done,” I don’t recollect which.
- Q. Did you get a pike?
- A. I did.
- Q. Where?
- A. They were thrown out of a door or a window in the place where the store was.
- Q. Did *Ryan* get a pike?
- A. He did.
- Q. Was that before or after the men were piked?
- A. It was after; in consequence of their being so active in this business, and they had such an appetite for it, we did not get pikes till it was done.
- Q. Were there great numbers armed with pikes?
- A. There were.

Q. Were

Q. Where were you led after ?

A. The prisoner brought us on marching in front, and another man with a three cocked hat, and who was afterwards dressed in regimentals.

Q. To what place did you go ?

A. Towards *Thomas-street*.

Q. How was *Rourke* dressed ?

A. He was dressed with an outside white coloured riding coat, under which he had a dark green coat with plated buttons, and seemed to be newly made.

Q. Can you form any guess, what number the party consisted of at this time ?

A. I cannot; it was a large number.

Q. Who appeared to have the command of the party ?

A. *Rourke* had as much command as any of the party; he had as much as the man with the cocked hat.

Q. From what circumstances do you collect that he acted with as much command as others;—did they address him by any name ?

A. Some called him "*Captain*;" but the countrymen called him "*General*."

Q. Then there were countrymen there ?

A. There were from towards *Naas*.

Q. After you got into *Thomas-street*, what next happened ?

A. As soon as we came to the corner, the watchman there was making some noise, and the prisoner ordered his men to take and pike him; which they did.

Q. Did you see any other transaction afterwards ?

A. I did—Sir; I saw him going back and forward with the people, and beating back and forward in the street, and two or three men were killed, and a horseman was also killed.

Q. Mention the particulars respecting the horseman ?

A. I saw this man, the prisoner, approach the horseman, and ask him where he was going? the man was in such a terror he could not answer; upon which, *Rourke* fired at him, and he fell from the horse, and they piked both the man and the horse; I saw *John Hayes* pike the horse.

Q. Was the horseman dressed in any particular way ?

A. He was dressed in a dragoon's uniform.

Q. (By

Q. (*By the Jury.*) Had he a sword drawn?

A. No, Sir, he had not.

Q. After this, what occurred in *Thomas-street*;

A. The horseman was the last person I saw killed: they continued beating back and forward for some time.

Q. Did you and your comrade remain with the party all the time?

A. We were keeping hold of each other's hands, watching for any open, through a lane to escape with our lives.

Q. Where did you proceed?

A. We beat down towards *Meath-street*, and there we got off.

Q. How did it happen that you got off there?

A. There were four men and my comrade and me who escaped.

Q. How long after you got down towards *Meath-street*, did you escape?

A. Almost immediately; for after the horseman was killed, they began to scatter.

Q. Where did you go to?

A. We ran down *Meath-street*, and went towards *Tallagh*.

Q. Did the four men go along with you?

A. They did for some part of the way, and two of them said they would go back and see how the town was.

Q. Did you carry your pikes with you?

A. We did, for fear of those four men.

Q. How long did the other two remain?

A. Till morning.

Q. Did you see any fighting?

A. No; but we heard the army fire when we were leaving town.

Q. What did you and your comrade do with your pikes?

A. When we got into the fields, we threw them away, and the rest of the men did the same.

Q. Where did you go to?

A. We did not know where we were going to, not knowing the country; but we got to *Tallagh-hill*.

Q. Did you go to any other place—where were you taken?

A. In *Mountrath*.

Q. Was

Q. Was your comrade taken also?

A. He was.

Q. Upon what day?

A. On *Tuesday*; because we were shy of going through the country.

Q. By whom were you taken?

A. By the magistrate of the town, to whom I told, I was in *Dublin* that night, and I told the same to Lord *Castle-Coote*, I told the truth to him.

Cross-Examined by Mr. CURRAN.

Q. You sir, by what you say, were certainly present with those people, whoever they were, who committed the murders you have described?

A. Yes, sir.

Q. And at the time; they were committed, you were armed with a pike?

A. Yes, sir, in part of it, after coming up through *Dirty-lane*.

Q. In endeavouring to make your escape, did you go as far as *Tallagh-bill*?

A. I did, sir.

Q. Had you been often there?

A. No, sir.

Q. Had you been there before, sir?

A. Never.

Q. What object had you in going to *Tallagh*, for that is not the way to *Mountrath*?

A. Because I was making off with my life, my comrade and I; we had no call at all to the business.

Q. How soon after you were taken were you brought before a magistrate?

A. I was very soon brought before a magistrate, and afterwards before Lord *Castle-Coote*, the colonel of the regiment.

Q. Did you tell him every thing you swore to-day?

A. I did, from time to time.

Q. How do you mean from time to time?

A. I told him of *Felix Rourke* and *John Hayes*.

Q. When did you tell him of them?

A. When I went to him first.

Q. But you did not tell him then all the other matters?

A. No.

Q. How

Q. How many times were you examined before you gave the whole account?

A. I cannot tell.

Q. But you were examined divers times?

A. Yes.

Q. Were you examined several times on the same day, or upon different days?

A. Upon different days.

Q. How many days altogether?

A. I cannot say; there were a good many times; there were three or four times; it was a thing I was not to keep an account of.

Q. How many times were you examined before Lord *Castle-Coote*?

A. I cannot say.

Q. Were you not examined two or three times before him?

A. I was; I believe.

Q. You cannot say how many more times?

A. I cannot.

Q. Were you put into prison?

A. I was.

Q. Where?

A. Into the Market-house at *Mountrath*.

Q. How long did you remain there?

A. That night, and part of the next day.

Q. Were you and your comrade examined in presence of each other?

A. No; sir.

Q. You were examined separately?

A. We were.

Q. Were you examined thus upon one day by Lord *Castle-Coote*?

A. I cannot say; he brought me back, I think, to the best of my knowledge; after being examined, to examine me again.

Q. Then you were examined the third day?

A. I cannot say; as to that.

Q. Did you not say, that he examined you three or four different times?

A. I cannot say how many times I was examined.

Q. Did you not say, that you were examined three or four different days before Lord *Castle-Coote*?

A. If I did so, it was right.

No. 7.

D

Q. Do

Q. Do you mean to say, that you do not know whether you swore true or not, when you said you were examined upon three or four different days?

A. I cannot say—I was examined several times, and kept no account; I did not think to be questioned in this manner.

Q. Upon which of these days was it you first named *Rourke*, the prisoner; was it on the first day that you swore?

A. Yes.

Q. Did you name any other person on the first day?

A. I did.

Q. Did you name all the persons whom you have mentioned this day, upon the first day you were examined?

A. All on the same day?

Q. Do you not understand the question?

A. Did not I tell you, I was examined more days than one.

Q. Then you mentioned only *Rourke* upon the first day?

A. I did; and the man who came to *Rourke's* assistance.

Q. Do you not think, that Lord *Castle-Coote* had a bad opinion of your story, when he sent to examine you three or four different times?

A. I told him I could not remember all their names; I told him I was taken at a *nonplus*, and he bid me think of the people.

Q. Did he say that to you?

A. No, but I told him how I was, and he bid me think of the people.

Q. Then when you spoke of being at a *nonplus*, you must have said that yourself; now tell me, what did yourself say to you?

A. He asked me, why I could not give a better account, and desired me to think of it.

Q. Then though you mentioned all these facts, and named *Rourke* and *Hayes*, yet he asked you why you could not give a better account?

A. He did.

Q. This was upon the first examination?

A. Upon the second.

Q. When did you mend your account by naming *John Cullien*; was it upon the second day you named him?

A. I am not sure.

Q. What

Q. What addition did you make to the story upon the last examination?

A. I cannot tell.

Q. Upon what day of the week were you remanded to *Dublin*?

A. I was sent from *Maryborough* on *Sunday*.

Q. Do you mean the *Sunday* following your arrest?

A. Yes.

Q. From what place?

A. From the gaol.

Q. What gaol?

A. From *Maryborough* gaol; I think it was *Sunday*.

Q. Where were you born?

A. In *Frankfort*, in the King's County.

Q. You are a pedlar?

A. Yes.

Q. Was that your first occupation?

A. It was my first and last.

Q. I thought you were in the *Kildare* regiment?

A. So I was; my uncle was in the regiment and I used to sell things betimes, and a serjeant and a corporal knew me.

Q. Is it any part of the accoutrements of that regiment to have blocks of wood tied to the men's feet?

A. In respect of not keeping myself clean.

Q. Then it is customary in that regiment to arm their heels with blocks, I was not asking you about any thing dirty; but you say you were ornamented with wood, pray let me ask you was it a washing tub?

A. It was a piece of wood.

Q. Was it hollow, so that you might wash a shirt in it?

A. It was a piece of timber.

Q. How often had you a log book of that kind attached to you?

A. First at *Laughlinstown* camp, next at *Balbriggan*.

Q. Were you anchored in that way at any other place?

A. Not that I recollect.

Q. I would be glad to know, whether you were ever logged in that manner upon any charge of deceit?

A. No, I never could know of it.

Q. Had

Q. Had they any pet name for you such as a ring dropper?

A. No.

Q. Did you ever hear, that they sneeringly called you names, and charged you with selling pinchbeck rings as gold?

A. I never heard of such names, I sold pinchbeck rings without doubt.

Q. I cannot say, in point of law, if a man had a pinchbeck, or an iron ring, it would be criminal to sell it as of a better quality.

A. I never sold them for any thing but pinchbeck, I never sold them for gold.

Q. I do not say that you did, but were there not some who charged you with selling them as gold; did they not surmise that?

A. They did, and how could I avoid it—I never sold any as gold, and I have persons here who know my character.

Q. Was it not the general reputation you had in the regiment?

A. I cannot answer as to that.

Q. Did not all the regiment say it of you?

A. No, they did not all; which of them would buy a ring of me without having it examined.

Q. Did not most of them entertain the opinion of you, which I have mentioned?

A. Many of them did, because they had a spleen against me, for having more money than they had and not treating them with drink.

Q. You said, that many harboured that unfavourable opinion of you?

A. Many did.

Q. Pray were you ever as much inclined to your cups, as you have been to rings; did you ever make any promises against drinking?

A. Drinking!

Q. Yes?

A. No, sir,—I did not understand you about cups.

Q. I ask you, did you ever take any oath against drinking?

A. I did.

Q. Then

Q. Then, I ask you, whether did you keep to the oath, or to the drink afterwards?

A. I kept to the oath always.

Q. Do you mean to say, that when you took an oath against drinking, for a particular time you kept the oath, until the time was expired?

A. I did.

Q. And never transgressed, save the contrary?

A. I had a pocket book and swore upon it against drink, I told some men, whom I understand are in court to appear against me, that it was no oath and I might drink when I pleased.

Q. So you swore upon a pocket companion and you persuaded yourself it was no oath?

A. I generally left myself an allowance.

Q. An allowance to break your oath?

A. I reserved myself a compliment.

Q. Pray what kind of civility was it?

A. Some times two pints and two glasses.

Q. Of what?

A. Two pints of porter and two glasses of spirits.

Q. How often did you make this vow against drinking, and how often did you break it?

A. Twice in consequence of the allowance being too large.

Q. Was it in consequence of your getting sober you resolved to be drunk?

A. It was all one.

Q. Where is the little book?

A. God knows where it is.

Q. So you neither kept the book nor the oath; by virtue of the oath you have now taken, was it not a little pocket manual upon which you swore?

A. What manual?

Q. A little prayer book, a mass book?

A. By virtue of my oath it was not.

Q. Were there no leaves in it?

A. There was nothing in it but the bills of the tradesmen I dealt with, I can neither read or write, and could not use such a book as you mentioned.

Q. But you were sure that was no oath you swore against drinking?

A. I was advised to do so.

Q. Did

Q. Did you think you were taking an oath that would bind you?

A. I cannot say it was an oath having no contents in it.

Q. Then you wanted to guard yourself against drinking by taking an oath that was not binding?

A. I thought it was as good as if it was upon a large book, and if I broke it 'twas a matter of no great consequence, it was no harm to swear upon a pocket book.

Q. How do you know they were bills which were in it?

A. No more than as I got them from the merchants.

Q. Do you know what the book was upon which you swore to day?

A. I did.

Q. What was it?

A. The holy evangelists.

Q. But you acknowledge you took an oath against drinking and did not keep it?

A. There was no contents in it.

Q. What is the book of the holy evangelists?

A. I conceive it a solemn oath.

Q. What are the contents of it?

A. A man's life lies in it.

Q. Is that all you know about it—by whom were you first examined after you came to *Dublin*?

A. I was brought first and foremost to the castle.

Q. How soon after you were brought to *Dublin* were you taken there?

A. In the course of some time.

Q. How soon after?

A. I cannot tell, Mr. *Swan* came for me and brought me down to the castle.

Q. Were you ever charged with committing frauds by dropping rings, and pretending to find them in company with other persons?

A. No, sir.

Q. (*By a Juror.*) When you made your escape from *Thomas-street*, you went to *Tallagh*, through the fields, did you carry your box with you?

A. No, sir, all the money we had was half-a-crown.

John Ryan,

Examined by Mr. MAYNE.

Q. Are you of any trade or do you carry on any business?

A. Yes, sir, I used to sell some handkerchiefs through the town upon my arms, and little waistcoats.

Q. Then you are a sort of a pedlar?

A. Yes?

Q. Where have you followed your business this year past?

A. In *Dublin* mostly.

Q. Were you in *Dublin* upon the 23d of *July* last?

A. I was.

Q. Where had you lodged before that time?

A. In the *Talbot-Inn* in *Thomas-street*.

Q. Had you a companion?

A. I had.

Q. What was his name?

A. *Michael Mabaffy*.

Q. Did he sell goods with you and be much with you?

A. Yes, sir.

Q. Where were you in the evening of the 23d of *July*, about dusk?

A. I was coming up the corner of *Dirty-lane*.

Q. Was any person with you?

A. There was, *Mabaffy*.

Q. Did any thing particular occur?

A. I thought I observed a greater crowd than usual.

Q. Was any thing done either to you or to *Mabaffy*?

A. We were stopped there.

Q. Was it a man or a beast who stopp'd you?

A. A man.

Q. What did he say?

A. He gave me a punch and drove me down. I was going to the left-hand side, but was turned down *Dirty-lane*.

Q. What became of *Mabaffy*?

A. He was turned down too.

Q. What did the man punch you with?

A. With his fist.

Q. Are you subject to any infirmity?

A. I am subject to the falling sickness.

Q. Were

Q. Were you well and sober upon that night?

A. I was sober but not well.

Q. What were you turned down *Dirty-lane* for?

A. When I got the punch, I turned round to know the reason of it, he pulled out a blunderbuss, he wore a big light coloured riding coat, he cocked the blunderbuss; and my companion *Mahaffy* called out to him not to kill me.

Q. You say you were not well that night. Did you become worse at any particular time?

A. I did, when another man came up to his assistance.

Q. Had he any arms?

A. He had a blunderbuss open to the world.

Q. Did he say any thing?

A. He said he would blow the contents through us; I made off to the wall, and was seized with an empty straining of my stomach having nothing to throw off; and my eyes lost their sight.

Q. Then you were very ill against the wall?

A. I was.

Q. Did it last long?

A. I cannot tell, but I heard a shot fired; and I roared out to my comrade.

Q. Did you call him by name?

A. I did.

Q. Did he come to you?

A. He did, and took me by the hand and said our lives were gone.

Q. Did you shortly recover your sight; or raise your eyes so as to see what was going on?

A. I saw a parcel of men with white handles darting along.

Q. What did they appear like?

A. Like a mob of men.

Q. What had they in their hands?

A. Pikes.

Q. When you recovered what happened?

A. There was a pike shov'd into my hand, and another into *Mahaffy's* by the man who forced us down.

Q. Were there a great many people there?

A. There were.

Q. What became of you next—which way did you go?

A. We were drove up to *Thomas-street*.

Q. Do

Q. Do you know how?

A. We were shoved up.

Q. Was the crowd behind you?

A. There were some before and some behind, though I did not venture to look back for the world.

Q. Did you see any person lying there?

A. I saw a person who looked like a soldier.

Q. Was he dead?

A. As far forth as I could judge, he was, he had white breeches and waistcoat, and I think he had gaiters.

Q. Did you see any other?

A. I did.

Q. Was he a soldier?

A. No, but a watchman at the corner who said "What is this," and they gave orders to pike him, and he was killed.

Q. Did you hear any particular expression as to what place they were going to, or whether they were to attack any place?

A. I did. They said "Boys is it the Castle we will take first?"

Q. That was asked as a question?

A. Yes.

Q. Did you see any thing about a horseman?

A. I did.

Q. Where?

A. In the street upon the left-hand side.

Q. What did you see?

A. I heard the noise of a horse, and then a shot was fired, and I saw them darting their pikes into the horse and the man.

Q. That was in *Thomas-street*?

A. It was.

Q. You did not know the faces of the people who turned you down *Dirty-lane*?

A. I never did.

Q. Could you know them since?

A. I could not, for when I saw the blunderbuss I would not turn up my eyes for the king's dominions.

Q. Did you hear any person's name mentioned among themselves, whom they called leader or captain?

A. I heard the name of *Rourke* mentioned.

Q. At what place?

A. In *Thomas-street*.

No. 7.

E

Q. At

- Q. At what time?
- A. A little after the affair of the watchmen.
- Q. Was that after you came out of *Dirty-lane*?
- A. Yes.
- Q. What was it you heard said?
- A. I heard some of them say "*Colonel Rourke*" at one time, and "*General Rourke*" at another time.
- Q. When did you get away from that body?
- A. Just after they were done with the horseman, they were hovering up and down the street.
- Q. Did any persons go away with you?
- A. There did, four men and my comrade.
- Q. Which way did you go?
- A. By *Meath-street*.
- Q. Did you come back into town that night?
- A. No, sir.
- Q. Did *Mabaffy*?
- A. No, sir.
- Q. When you saw the armed body in the town did you see any person who seemed to be a principal among them besides *Rourke*?
- A. I did not.
- Q. Did you see any person particularly dressed?
- A. I did, I saw a man in a red coat with a cocked hat and white feather.
- Q. Was he near *Rourke*?
- A. I cannot say, as I did not know *Rourke*.
- Q. You went away you say with *Mabaffy*?
- A. I did.
- Q. And did not return?
- A. No.
- Q. Were you stopped any where?
- A. Not till we got to *Mountrath*.
- Q. How long was that after you left town?
- A. It was on *Tuesday* after.
- Q. What countryman is *Mabaffy*?
- A. A *Queen's County* or *Kildare* man.
- Q. What countryman are you?
- A. *Tipperary*.
- Q. As you went along did the people make any enquiry about *Dublin*?
- A. They asked us what was going on in *Dublin*, and they asked us some questions which we did not understand; but they made our hair stand an end.

Mr.

Mr. CURRAN: My lord, I must object to this evidence what other people said at a distance from the place where the prisoner is alleged to have been, cannot be admissible evidence against him.

Mr. MAYNE. I should contend that the evidence is admissible for the purpose of shewing a general confederacy; but I will not press it.

Q. Were you stopped at *Mountrath*?

A. We were.

Q. Were you brought before a magistrate?

A. We were.

Q. Who was it?

A. I do not know his name.

Q. Were you examined?

A. We were, we told lord *Castle-Coste* when we were at the gaol.

Q. Did you tell him what you knew of this affair?

A. I did so far forth as I knew.

Q. And after that you were sent to *Dublin*?

A. Yes, sir.

Cross-Examined by Mr. PONSONBY.

Q. How long did you stay in *Dublin* upon the night of the 23^d?

A. Not above a quarter of an hour.

Q. Were you not more than a quarter of an hour in *Dublin*?

A. From the time they stopped us.

Q. How long did you remain in *Dublin*?

A. I was about a quarter of an hour in their possession.

Q. But how long did you remain in *Dublin*?

A. The moment we got out of their possession we got out of *Dublin*.

Q. Where did you go to?

A. Through *Meath-street* to the fields.

Q. Where did you first stop?

A. We did not stop till we had the day-light, going from one field to another, we did not know what way we were going.

Q. When day-light came where did it find you?

A. In a field near *Tallagh-Hill*.

Q. Were you acquainted with that country?

A. No.

Q. Where

Q. Where did you remain all the day?

A. About *St. Mather*.

Q. What! the next day?

A. Oh no, the next day we were going along:

Q. Where did you rest that night?

A. Beyond the *Curragh*.

Q. But where, for that is a wide description?

A. In a house where we got a lodging.

Q. Was it on the road side or in the fields?

A. We came to the *Curragh* and then went to a farmer's house, who gave us a lodging having no money.

Q. Where did you go to the next day?

A. We crossed the country till we got to *Maryborough*.

Q. When did you stop next?

A. That evening.

Q. Where?

A. I do not know the name of the place, it is within four or six miles of *Maryborough*.

Q. What particular place did you intend to go to?

A. To *Ennis*, because my wife and children were there.

Q. Were you taken up at *Maryborough*?

A. No, I think they call it *Mountrath*.

Q. Who was with you at this time?

A. No one but *Mabaffy*.

Q. Where you lay at the farmer's house, did you give an account of this matter?

A. I never said a word about it.

Q. Did you give any account of it upon the second night?

A. No, sir, only that we were in dread of staying in *Dublin*; that they had broke out there.

Q. You say it was at *Mountrath* you were taken up?

A. I think so; it was not the place where the gaol was.

Q. Was *Mabaffy* taken up?

A. He was.

Q. As you travelled together, perhaps you were kept together?

A. We were for a while.

Q. Were you examined by any person?

A. I was, by a Justice of Peace; as they said.

Q. Did you carry a box when you sold your goods?

A. No, only handkerchiefs upon my arm; I was not able to carry a box.

Q. What

Q. What business does your wife follow?

A. She bakes confectionary in *Ennis*.

Q. Was *Mahaffy* going into *Ennis* with you?

A. He was.

Q. You were very much frightened at what had happened, and it was that determined you to go so far?

A. It was, sir, for I thought I would not return to *Dublin* for the world.

Q. How often were you examined?

A. They examined me but once.

Q. But once, do you say?

A. My Lord *Castle-Cooté* examined me several times.

Q. Did he examine you upon more than one day?

A. He did. He thought I knew a deal, I believe.

Q. Pray how long have you and *Mahaffy* been partners in business?

A. Mostly, off and on, these two years.

Q. (*By the Court.*) Were you partners or comrades?

A. It is all equal.

Q. Did you divide the profits?

A. Yes.

Q. After you were examined by Lord *Castle-Cooté*, you were not detained long in the *Queen's County*?

A. Some few days.

Q. How many?

A. I cannot tell; I was so very bad I could not eat or drink, I had the fright so much in my heart.

Q. Where were you sent to from the *Queen's County*?

A. I was sent along here to *Dublin*.

Q. When you came here, did any persons ask you questions?

A. There did.

Q. Did *Mahaffy* come with you?

A. Yes, he was in the coach.

Q. You travelled in a coach to *Dublin*?

A. Yes; and there was a man to keep us from speaking to each other.

Q. With whom did you talk after coming to *Dublin*?

A. With Mr. *Kemmis*. Mr. *Swan* asked me, if I knew any of them; I said I did not, but one man.

Q. Where have you been kept since?

A. In *Kilmainham*.

Q. Who

Q. Who was the person who stopped you ?

A. I cannot tell. We were stopped by three men upon the bridge, and were brought before a justice of peace.

Q. Who was he ?

A. I cannot say.

Q. Who detained you ?

A. I do not know ; I suppose the justice of peace.

Q. You were examined several times ?

A. No, only once, and afterwards several times by Lord *Castle-Coote*.

Q. Did you tell him all that you have told here ?

A. I cannot say that I told him all.

Q. Did you tell him more upon the second time than you did upon the first ?

A. No ; I think not.

Q. Did you upon the third time ?

A. No ; I told him all upon the first time that I could think of.

Q. You said you were sick when this crowd of people came up to you ?

A. No ; but when I got against the wall.

Q. Were you sworn against drinking ?

A. I was. I took an oath against drinking, and I kept it ; for if I took a second glass I would get giddy.

Q. It was not from drink that you were vomiting ?

A. No indeed ; I drank one glass in the middle of the day.

Q. *Mahaffy* was a sober man too ?

A. I always found him so.

Q. He took an oath against drinking ?

A. I never saw him take an oath of that kind.

Q. Can you recollect the hour when you were pushed down the street ?

A. I cannot.

Q. Was it 8 o'clock ?

A. It was more ; it was just duskish.

Q. Was it ten ?

A. It was not.

Q. What hour was it, to the best of your opinion ?

A. Between 9 and 10, or 8 and 10, I cannot tell which ; it was just as the lamps were lit.

Q. (*By the Court*). Where did you leave your goods ?

A. In my lodging, my comrade left them.

Q. (*By*

Q. (*By a Juror.*) Where did you lodge upon the 23^d of July?

A. At the Widow Doyle's, in *Dirty-lane*.

Q. I thought you said you lodged at the *Talbot Inn*?

A. I did before that; but for three weeks before the 23^d of July I lodged at the Widow Doyle's.

(Here extracts from the proclamation were read. *Vide* No. I. *Kearney's case*, page 54.)

MARY McCLELAND,

Examined by the ATTORNEY GENERAL.

Q. Look at the prisoner at the bar?

The witness did so.

Q. Do you know him?

A. I believe so.

Q. Speak positively, madam; do you know him, or not?

A. I believe him to be the man; I cannot positively say it. I cannot positively swear, that I ever saw him before.

Mr. ATTORNEY GENERAL. You may retire, madam. My Lord, we close the case on the part of the crown.

Mr. CURRAN.

My Lords, and Gentlemen of the Jury,

It is my duty to assist the prisoner in making such defence as the nature of the charge against him, and the nature of the evidence which he has to oppose that charge, admits of. I have very often felt the most painful necessity of being in some degree responsible for the event of a trial of a man, upon the issue of which depends every thing which is dear to an human creature; and it has frequently been my lot to have that responsibility aggravated, by feeling myself under a necessity of pursuing a very long continuation of statement and of proof on the part of the Crown, by a very wide range of observation on the part of the prisoner. I have been always encouraged, however, to yield to that necessity, by being always certain, that on the part of the Jury and the Court, that trespass upon

Upon their patience would be received with indulgence. And I have-availed myself of that indulgence, whenever the case required that I should do so. But where it is not necessary, I would wantonly abuse the indulgence I experienced; by detaining you for any length of time.—Where it is not necessary, I ought not to trespass upon your patience, and that for two reasons:—I think it would be a violation upon that indulgence; and highly reprehensible with respect to myself—it would be a breach of that courtesy and good manners which always prevail in forensic deliberations. And there is another reason:—I always wish to bring the case of my client within as brief a compass as may be: because, where the defence is simple; to blend it with a variety of circumstances which do not give it weight, diminishes its effect by making it more complicated; than it would be, if put to the Jury in its natural shape.

I shall therefore briefly detail the circumstances of the prisoner's case, in the statement with which I shall trouble you, and the Court—and the more so, here, because, if in my anxiety for conciseness, I should omit any thing material to my client, the sagacity of my learned colleague will not suffer it to escape; and most probably my omission might prove more beneficial, from the superior strength which the topic would receive from him. Therefore, gentlemen, I waive any observation upon all the collateral matter which you have heard; and I come directly to the charge which has been sworn to against my client.—I say, I waive all consideration of the collateral matter, making only this observation, which will have the assurance of the Court, because I feel it to be law, that no matter what implicit credit you may give to the testimony of all the witnesses, who preceded *Wabaffy* and *Ryan*;—though you suppose all the facts sworn to by those prior witnesses are true, yet unless those facts, or a participation of them, be brought home to the prisoner, satisfactorily to your consciences, they cannot affect him. It furnishes a general subject of regret, that such things should have happened. But the fact now to be tried is simply this: “Had the prisoner any concern in this atrocious and most indefensible transaction?” That he had, depends wholly upon the evidence of these two witnesses. The testimony of a witness may be impeached in two ways—either by the circumstances of inconsistency—of falsehood.

hood—of want of integrity, deduced from the examination of the witness himself; or by the direct testimony of others establishing such a profligacy of character, as renders him unworthy of any credit.—It would be a sad thing indeed, if a corrupt, or unintelligent witness should not have one privilege left to him for the benefit of public justice, and that is, the privilege of destroying his own credibility. Therefore it is a circumstance which must strike the understanding of the most inexperienced and simple man, that you may ascertain the incredibility of a story, by comparing one part of it with another, and the conduct of the relater, with the whole of his account.—The first witness had been a private soldier—he had suffered a corporal and degrading punishment for some sort of unsoldierly conduct;—he had been branded in his regiment as a knave;—he is discharged, and then indeed he makes a strong struggle to save some of the regiment from the scandal of thinking badly of him.—But he has fully admitted, not only, that he was guilty of unsoldierly conduct, which I do not much understand, and I suppose it must relate to some unbecoming behaviour; but his character is infinitely worse, because he has abused persons of the common and ordinary rank of life, by the most abominable imposition and imposture.

If that be his character, and you have it from himself, I think he is no respectable sponsor for his own credibility. I cannot say, that the familiarity of breaking an oath of any sort, even a voluntary oath, can add to the credit of any man. I am afraid, that the habit of doing these things, weakens the solemnity of the obligation.

Gentlemen, I have just glanced at his character;—now see, what is the probability of the story which he tells:—He is a pedler, reduced to the most abject distress. By mere accident, he says, he, with an invalid partner, goes out to take an afternoon walk—no doubt for an innocent purpose.—The evening promenade commenced at the time an assemblage of people were arming themselves for the purpose of mischief.—It is very probable, that a man walking out innocently, might meet with such an accident.—But it appears somewhat odd, that a man of a weakly habit, should take a walk, for the benefit of the *night air*, in *Dirty-lane*!—so, however, it happened.—There, he is accosted by a man, who endeavours to enlist him into the service of the country, by pointing a

blunderbuss at his head. While he is yet debating the point, between his loyalty and his danger, without thinking of the box he received, which probably was nothing, and finally another person coming up, he suffers himself to be armed.—That he and his comrade were there, I think extremely probable.—If the account given of the prisoner be true, it would involve him in the transactions of the night.—But the credit of the witness who deposes to the prisoner being present, is the principal subject of enquiry.—Fifteen minutes happened to be the precise time in which pikes are flung out, the people are armed, and various murders committed—after which *Mahaffey* and his partner break into the fields, and make their way to *Tallagh-hill*, carrying their pikes into the fields, and leaving them there. It is physically possible, a man might go to the corner of *Dirty-lane*, meet a crowd of ruffians, get armed with a pike, see two or three murders committed, and then make to the fields.—However, I cannot but say, that it strikes me as a singular circumstance, that these men appear to forget the abuse which was offered to themselves, in the evidence which might be brought against them, from the pikes which they threw away—and instead of coming back to the city, or applying to a Justice of the Peace, they set out, and never drew breath until they were forty miles from Dublin.—That is the account which *Mahaffey* gives, and upon that arises the question, which you will dispose of with wisdom and humanity—namely, Whether you can feel yourselves warranted in pronouncing a conviction, which will end in the extinction of the character and life of the prisoner, upon the testimony of a witness giving such an account of himself?—He has corroborated that account of himself, because he has given the opinion of the noble lord who examined him.—What was his account?—One would imagine, it would have been short and simple:—"I was armed with a pike, and I ran away as soon as I could get loose."—But it was not so.—It does not appear that he gave evidence for some time, and when he did, it was in the manner of an Irish tenant paying rent—one gale is paid when another becomes due. He told part, the first day he was examined. He is sent for the second day.—Why?—because Lord *Castle-Corse* was not satisfied with the account which was given.—Will it be said that the witness was disturbed, and not collected?—What was the result in the mind of the magistrate?

magistrate?—Does he appear to have been satisfied?—On the contrary, he sends the witness and his comrade in strict custody in Dublin, accompanied by a person to prohibit any intercourse between them;—and yet this is the witness upon whose testimony you are called upon to pronounce a verdict, which probably may sweep the prisoner from the face of the earth before to-morrow's sun goes down.

This leads me to state very shortly what will be added to that character which you have already heard. There is an observation which has been made a thousand times—it cannot receive strength from repetition—it is impossible to prove a negative. The witness says, the prisoner was in *Thomas-street*, at nine o'clock—It is beyond moral possibility to disprove that fact by direct testimony—it can only be counteracted by shewing some fact inconsistent with the assertion.—The prisoner cannot prove that he was not there, except argumentatively.—If he proves that he was in another place, and you believe the evidence he produces, you must reject all the testimony, which has stated him to have been in *Thomas-street* at that particular time.—There is a general sort of sneer flung out against an *alibi* defence, as if it were always despicable,—always false.—That it may be true is undeniable; and when true, it should be received with effectual attention, because it is the only possible species of defence, that can be brought forward.—There is no manner of proving, that a man was not in the place alleged, but by shewing, that he was in another.

Gentlemen, I shall close this subject, by making one observation—You have one witness swearing that the prisoner was in the city, at a time which tends to make him culpable.—You will have many witnesses making the matter clear, that he was in another place, and if their testimony be true, it shews he was not in the place, where the first witness would place him.—You will have therefore to balance the evidence.—If the most respectable man were called upon to know where he passed a particular day, it can only be done by the persons with whom he casually converses, particularly if it be in the late hours of the day.—In producing those persons, we appeal to your experience:—If the witnesses, in proving the *alibi*, discover the blemish of partiality, they must diminish their own credit.—You see I am canvassing the matter fairly with

with you.—I am not colouring it with the impressions of the advocate, but representing it in the same cool way that you yourselves would do. If on one side, it shall be said that they are his friends and relations who prove this defence, your humanity, good sense and justice will determine, by what other evidence this kind of exculpatory defence could be established.—But when that is said upon one side, let me ask upon the other, Who is the man, whom you are called upon to believe in his direct allegation against the prisoner?—He is an odious traitor!—a man utterly illiterate—having no idea of the nature of an oath, consequently ignorant that a false one will consign him to eternal punishment!—Will you permit him to swear through the blood of an innocent man?—Will you allow a common informer, who has blasted his character, to substitute the life of another man for his own? He thought it necessary to avert from his body—if not from his soul, the consequences of his own crime, and he comes forward against a man, who has it not in his power to open his lips to contradict him.

No matter what the feelings of the prisoner may have been when he heard the evidence; or with what conscious innocence he might have breathed a prayer to heaven, either that the guilt of the informer might not fall directly upon his head, or that God might forgive the wretch who deposed it. With respect to you, or the court, the feelings of the prisoner are locked up in silence. The witness is privileged to proclaim the schemes which he has contrived for his own protection; and he thinks it more laudable to add the crime of murder by false testimony to that of treason, than become the victim of his own crime, which he had no chance to escape, but by that horrid aggravation of guilt!—Consider, if any of you were placed in the situation of the prisoner, gagged and bound as he is, and saw the perjury of a witness saving his own infamous blood by the barbarous effusion of yours. Whatever might be your feelings, you could not give them utterance.—Imagine, then, to yourselves the situation of the prisoner at the bar, the victim at which perjury is taking aim to bring him to the ground, and calculating the profits which are to be shared with the partner in trade and in treason!—If there be any thing improbable, let my client have the benefit of it—he cannot be heard. As well might evidence be uttered from the grave, as from the prisoner's situation, in which
the

the witness has placed him, as a preliminary grave. If you have any doubt, remember the sacred principle of the law, too frequently not heard in troubled and distempered times, that it is better that ninety-nine guilty persons should escape, than that one innocent person should fall a victim to the inconsiderate credit which may be given to the voice of accusation in times like the present.

Gentlemen, let me add one circumstance more:—You know what has happened, and the publicity of the events which have been given in evidence. You cannot think, that by suffering mercy to glean in the field of justice, and to steal her straw after the waste, which you shall have charitably connived at, there will not be still a plentiful harvest.

Gentlemen, I am not ashamed, that my heart has broken my promise of being concise; because, if I have any social principle within me—if you are men like me, you will reason not very unlike me, and feel not very different from me; at the uttermost, you can have only a strong belief, or suspicion, that the prisoner may be guilty of the crime. But if you condescend to rely upon any thing which I say, remember this, that nothing can be so dreadful as when a common informer shall be allowed to put a substitute in his place to satisfy the demands of public justice. I trust you will not furnish the first precedent of cutting off the life of a fellow-subject upon the uncorroborated testimony of an informer, guilty by his own confession, and stating, what cannot be contradicted by direct assertion, that the prisoner was equally guilty.—Gentlemen, I shall leave that testimony to be weighed by your humanity and your justice.

Daniel Barrett,

Examined by Mr. PONSORBY.

Q. Do you remember the night of the 23d of July?

A. I do.

Q. Do you remember the evening of that day?

A. I do.

Q. Where were you about the hour of eight o'clock?

A. I was at John Rourke's, in Thomas-street, at eight o'clock or twenty minutes after.

Q. Did you see the prisoner at the bar that evening?

A. I did.

Q. Where

Q. Where did you see him?

A. Standing at the bar with his sister-in-law, not having seen him for some time back, I asked him to take a tumbler of punch, which he refused, saying, he was going to the country.

Q. How long did you stay?

A. As long as I drank a tumbler of punch.

Q. Did you or he leave the house first?

A. He did, he said, he was going to the country, and bid them a good evening.

Q. How was he dressed?

A. In a dark coat and nankin pantaloons.

Cross-examined by Mr. ATTORNEY GENERAL.

Q. Who is John Rourke?

A. He is brother to the prisoner.

Q. And keeps a public house?

A. Yes.

Q. It was after eight o'clock.

A. Yes; for I had walked from *James's-street*, to borrow a horse to go next morning to the funeral of one *Bryan*, who was to be buried at *Powerscourt*.

Q. You had not seen the prisoner for some time before?

A. Not for a month.

Q. (*By a Juror.* Did he mention what part of the country he was going to?

A. Not particularly and I supposed it was going to his father's.)

Mary Rourke,

Examined by Mr. CURRAN.

Q. Do you recollect the 23d of July?

A. I do.

Q. Do you know the prisoner?

A. I do.

Q. Where do you live?

A. In *Thomas-street*.

Q. Do you recollect the prisoner's coming to your house that day?

A. I do.

Q. At

Q. At what time did he come there?

A. About half past four, he took some eggs and butter, I saw him several times after, it rained and I thought it was that delayed him, at a quarter after eight he bid me farewell and said he was going to the country.

Not cross-examined.

Daniel Delany,

Examined by Mr. PONSONBY.

Q. Where do you live?

A. In *Dolphin's-barn*.

Q. Do you remember the night of the 23d of July?

A. I do.

Q. Do you know the prisoner?

A. I do.

Q. Did you see him on the 23d of July?

A. I did at *Dolphin's-barn*, at the door of my father's house, and I standing there.

Q. Were you or he in the house?

A. I was standing at the door, leaning against the wall at the time he walked out of the house.

Q. What part of *Dolphin's-barn* is your father's house in?

A. At the far end near the *Circular-road*.

Q. Are you a member of a yeomanry corps?

A. Yes, of the *Rathcoole* corps.

Q. Which way did he go?

A. He bid me good night and walked up to *Camat-bridge*.

Q. About what hour was that?

A. About nine o'clock.

Q. Are you positive as to the hour?

A. It could not be more than a quarter after nine, for just before I saw him, I heard the canal bell ring.

Cross-Examined by Mr. SOLICITOR GENERAL.

Q. This was at your father's house?

A. It was.

Q. You were outside of the house?

A. Yes.

Q. The prisoner was within?

A. He was.

Q. Your

- Q. Your father keeps a public house?
 A. He does.
 Q. There were a good many people drinking there?
 A. Not many.
 Q. It was *Saturday* night, and do you mean to say there were none drinking?
 A. There were some, I do not mind the house, but the fields and ground.
 Q. How long was the prisoner there?
 A. I cannot tell, he was there some time.
 Q. He was in a great hurry?
 A. He was, he said it was late and time to go home.
 Q. Where does he live?
 A. I know where his father lives beyond *Rathcoole*.
 Q. (*By the Court.* How far beyond *Rathcoole*?
 A. About a mile)
 Q. He was in a great hurry you say it was so late?
 A. He was.
 Q. Did he drink any?
 A. I cannot tell.
 Q. If a man left *Thomas-street*, what time would it take him to arrive at *Dolphin's-barn*?
 A. A quarter of an hour.
 Q. Can you give an account why this man was so long going as from a quarter after eight to a quarter past nine?
 A. I cannot tell.
 Q. If you were in a hurry going to *Rathcoole*, would you go by *Dolphin's-barn*?
 A. I would from my father's.
 Q. But would you from *Thomas-street*?
 A. I would not.
 Q. What coloured coat had he?
 A. He had a dark coloured coat and nankeen pantaloons.

John Mathews,

Examined by Mr. CURRAN.

- Q. Do you know the prisoner?
 A. I do.
 Q. Do you remember the night of the 23d of July?
 A. I do.

Q. Whose

Q. Where do you live?

A. In *Jobstown* five miles from *Dublin*.

Q. Do you recollect to have seen the prisoner at any time that evening?

A. I did.

Q. At what hour?

A. Between ten and eleven o'clock.

Q. At what place?

A. At *Jobstown*.

Q. Did he make any delay with you?

A. Yes, we drank half a gallon of porter and some spirits.

Q. How long did he remain in your company?

A. Twenty minutes.

Q. After he left you in what direction did he proceed?

A. Towards home.

Cross-Examined by Mr. PLUNKET.

Q. You say, you saw the prisoner between ten and eleven o'clock?

A. Yes.

Q. Was it eleven?

A. No, it was not.

Q. How much did it want of it?

A. I cannot tell, my watch being broke, I left it in town to be repaired. My garden had been robbed some time before that—I went out to see if any persons were about it, and upon my return I saw the prisoner.

Q. Was there any disturbance that night?

A. None that I saw.

Q. All was quiet where you were?

A. It was.

Q. That is not the direct road to *Rathcoole*?

A. No.

Q. How far from it?

A. Near three miles.

Q. Is it the shortest way from *Dublin*?

A. I cannot say.

Q. Have you been in *Rathcoole*?

A. Yes.

Q. And in *Dublin*?

A. Yes.

No. 7.

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Q. Now

Q. Now, if you were going from *Rathcoole* to *Dublin*, is it by your own house at *Jobstown* you would go?

A. No.

Q. Have you not heard that there were disturbances at *Rathcoole*?

A. I heard it was spoken of by an old woman, who was confuted afterwards, and made out a liar by some of the neighbours.

Q. What was it she said?

A. She mentioned in the country that there were people in arms.

Q. And some loyal neighbour confuted her, and you were satisfied there was no disturbance?

A. No, there was not.

Q. They are as quiet now as they were then?

A. They are.

Q. And as loyal as ever?

A. I believe they are all loyal.

Q. Did you hear there were any men galloping between *Thomas-street* and *Rathcoole* that night?

A. Never; no men galloped by our place.

Q. Nor no messenger sent to know the success of the business?

A. No.

Q. Nor from *Naas*?

A. I cannot tell.

Q. How far is *Rathcoole* from *Naas*?

A. I cannot tell, though I have been at fairs there.

Q. Make a guess?

A. It is nine or ten miles from *Rathcoole* to *Naas*.

Q. You never heard there was a disturbance in *Naas* that night?

A. No.

Q. *Rathcoole* is on the road from *Dublin* to *Naas*?

A. It is.

Q. You never heard that the garrison at *Naas* were up all that night?

A. I never heard a word of it till now.

Q. You knew the prisoner well?

A. I have seen him very often since he was a boy, and I told him that the people were sitting up for him at home.

Q. That was where he lived?

A. It was at his father's place.

Q. Did

Q. Did he live there?

A. He did not live there.

Q. Did he live there on the 23d of *July*?

A. He might, unknown to me.

Q. Do you know him well?

A. I very often saw him since he was a small boy, and being a neighbour.

Q. Was he not employed in *Dublin*, as clerk to a person at *Bow-bridge*?

A. I heard he was a clerk some time before that, but whether he was at that time, I cannot say.

Q. It was nearer ten than eleven o'clock when you saw him?

A. It was half past ten.

Q. Where was it you had the drink?

A. At an ale-house in the neighbourhood, and we left some of the drink unfinished.

Q. Did he tell you any thing from *Dublin*?

A. No, he did not.

Q. Was he walking or riding?

A. He was walking.

Q. Had he been in the habit of going that road by night?

A. No, I saw him once.

Q. By night?

A. No.

Q. Did he say any thing whether he lived with his former employer?

A. No.

Q. What drink had you?

A. Half a gallon of porter, and a pint of spirits.

Q. How many persons were there?

A. There were three men in the house, and the workman with me.

Q. How far is *Jobstown* from the *Naas* road?

A. I cannot tell.

Q. Did you not live there?

A. If I went across the fields, it might be a mile and a half; but the road may be three miles.

Q. What road do you go from *Dublin* to your own place?

A. Through *Dolphin's-barn*, *Crumlin*, and *Tallagh*:

Q. (By

Q. (*By the Court.*) Do you know whether the prisoner went back to *Dublin* the next morning?

A. I cannot say; I heard no more of him till he was taken.

Q. How far is it from your place to *Tallagh*?

A. Not a mile?

Edward Pender,

Examined by Mr. CURRAN.

Q. Where do you live?

A. In *Whitestown*.

Q. Do you keep a public house?

A. I do.

Q. Have you a partner?

A. Yes.

Q. Do you know the prisoner?

A. Yes.

Q. Did you see him on the 23d of *July*?

A. I did.

Q. At what time?

A. Between eleven and ten.

Q. Was he in company with any one?

A. He was with *Matthews* and a man of his.

Q. Did they drink any liquor?

A. They did.

Q. How much?

A. Two half pints of whiskey, and a pot of porter.

Q. How long did they remain?

A. Fifteen minutes.

Q. Did you observe in what direction the prisoner had come?

A. I did not; the door was shut.

Q. Did you observe in what direction he went?

A. Towards home.

Q. Did he go towards *Dublin*, or from it?

A. From it.

Q. Was that towards his father's?

A. It was.

Cross-Examined by Mr. MAYNE.

Q. What time of the night was this?

A. Between ten and eleven. It was before half past ten.

Q. Did

Q. Did you look at the clock ?

A. No, I had no clock.

Q. Then it is by guess; was it not better than half past ten ?

A. It was.

Q. But it was not eleven ?

A. No, it was not.

Q. How can you swear that ?

A. I do not swear, only to the best of my knowledge.

Q. Are you sure, when you say it was not eleven ?

A. I am not, but it was past half past ten.

Q. Who told you that ?

A. Nobody.

Q. No person mentioned the hour ?

A. No.

Q. Do you know *Matthews* ?

A. I do, he is a near neighbour of mine.

Q. How near does he live to you ?

A. Forty perches.

Q. Did you drink with him ?

A. No, I had other business to mind.

Q. You were attending other persons ?

A. There were no other persons there but a carpenter, myself and my partner.

Q. What business had you to mind ?

A. I had writing to do after the day.

Q. What, writing on *Saturday* night at eleven o'clock ?

A. It is common to sit up late.

Q. Your place is five miles from town ?

A. It is.

Q. How far from *Naas* ?

A. I can't tell.

Q. How long have you lived there ?

A. Not long.

Q. How long ?

A. Three months.

Q. And in that time you never heard how far it was to *Naas* ?

A. I cannot tell.

Q. How far are you from *Rathcoole* ?

A. I cannot tell; I believe it is four miles.

Q. How far from your house to the *Naas* road ?

A. About a mile across the fields.

Q. There

Q. There was no company in your house, but those you have mentioned ?

A. No.

Q. Who ordered the liquor ?

A. I can't tell.

Q. Who attended the house ?

A. I believe it was I.

Q. Why do you not know ?

A. Because there is my partner.

Q. Then you attended other rooms that night ?

A. I did.

Q. There were a good many there ?

A. There were carmen and travellers.

Q. How do you know what liquor the prisoner and his friends had ?

A. I cannot exactly say.

Q. Did they pay you ?

A. No.

Q. Are you paid yet ?

A. No. They asked, how much there was to pay, and I called my partner, who told them.

Q. Did you drink with them ?

A. No.

Q. Did your partner ?

A. No.

Q. Who drank with them ?

A. The man who was with them.

Q. Did they finish their liquor, or leave any of it ?

A. I cannot tell whether they left any or not.

Q. Some people called there from town, and some from the country ?

A. There did.

Q. And was there no person there, but those you have mentioned, at the time the prisoner was there ?

A. No other.

Q. Did any body tell you what was going on in *Dublin* ?

A. No.

Q. Do you swear positively you never heard of it ?

A. Not till next morning.

Q. You did not hear of any disturbance at *Rathcoole* ?

A. No.

Q. Nor upon the *Naas* road ?

A. No.

Q. Then

Q. Then you went to bed that night—you had no suspicion of what was going forward?

A. Not the least.

Q. When did you hear it first?

A. Next morning.

Q. Did you know, whether there was any disturbance at *Rathcoole* that night?

A. No, I never heard of it.

Q. Nor at *Naas*?

A. No.

Q. Nor at *Maynooth*?

A. No.

Q. You never knew there were armed men upon the road?

A. I never heard of it.

Q. Not a word of it was mentioned that night?

A. No.

Q. Are you well acquainted with the prisoner?

A. I am.

Q. Did you see him often?

A. I saw him two or three times at chapel. I have a slight acquaintance with him.

Q. When had you seen him before?

A. I had not seen him for half a year.

Q. Where did you see him then?

A. At a chapel at *Saggard*.

Q. Where did he live?

A. I cannot tell.

Q. Where did you see him before that?

A. At chapel again.

Q. Did you ever see him at any other place?

A. Yes; at the chapel of *Bornabreen*.

Q. Was he ever in your house before?

A. Never.

Q. Where is his father's house?

A. Beyond *Rathcoole* a mile or two.

Q. Was the prisoner on foot that night?

A. He was.

Q. Is your house on the road from *Thomas-street* to *Rathcoole*?

A. I cannot tell; I never went from *Thomas-street* to *Rathcoole*.

Q. And

Q. And because you did not, you cannot tell which is the direct way?

A. I suppose the common high road is the way.

Q. And not by your house?

A. No.

MATTHEW ROURKE,

Examined by Mr. CURRAN.

Q. Do you know the prisoner?

A. I do.

Q. He is your brother?

A. He is.

Q. Do you remember the 23d of July?

A. I do.

Q. Did you see your brother that evening?

A. I did.

Q. Where did you first see him?

A. At my brother *John Rourke's*, in *Thomas-street*.

Q. Do you know of his leaving the house that evening?

A. I do not know; I do not imagine he left it while I was there.

Q. What time did you leave it?

A. About a quarter after eight.

Q. Did you see him after that?

A. I did, on the road.

Q. Did you set off together?

A. We did.

Q. How far did you go together?

A. We went to *Jobstown*.

Q. How much farther did you go?

A. Not more than a mile; but I do not know the country. We separated at *Jobstown*, and he went to a friend's house to sleep, being more fatigued than I was, and I went home to satisfy my mother, that he was in the country.

Cross-Examined by Mr. ATTORNEY GENERAL.

Q. Where did you live at that time?

A. With my father; I always lived with him.

Q. What brought you to town that day?

A. I had two particular reasons; first, by the directions of my mother, who heard an alarm about *Dublin*, and that they

they were talking of murder and massacre there, and my mother wished me to bring my brother *Felix* from town; and the second reason was, that I had a venereal, and was glad of the opportunity to get some medicine.

Q. You and your brother left town together?

A. Yes.

Q. And where did you first go to?

A. I through *Thomas-court*.

Q. You went as quick as you could?

A. We could not go very fast from the concourse of people.

Q. Then, there was some stir of people before you set out?

A. I never observed people walking without stirring; they moved back and forward.

Q. Did you tell your brother of the disturbance that was expected?

A. I remarked to him what my mother said; but said nothing more.

Q. As you were in a hurry, you went the shortest road?

A. No, I believe not. We were unwilling to be insulted by drunken people upon the road.

Q. The streets, you say, were crowded?

A. They were; and being so populous led me to think that the accounts I heard were true.

Q. To what place did you proceed?

A. To *Dolphin's-barn*.

Q. Did you stop there?

A. Yes; at *Delany's*.

Q. You got drink there?

A. Yes; the night being close, and we dry.

Q. Did *Delany* see you?

A. I cannot say; he might, or he might not.

Q. Did any person drink with you?

A. No, not that I recollect; there might, or not, an acquaintance or so.

Q. To what place did you proceed from that?

A. To *Jobstown*.

Q. Is it the shortest way to *Jobstown* through *Dolphin's-barn*?

A. I cannot say; we made it our direct way. I do not know the lie of the country; but we thought it the best way: a man was liable to be insulted the other way.

No. 7.

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Q. You

Q. You went fair and easy?

A. Not fair and easy, for that would be very easy, and that would not bring us home in the time we wanted.

Q. What did you find at *Jobstown*?

A. The porter we called for.

Q. How much?

A. Half a gallon, and some spirits.

Q. What house are you speaking of?

A. *Pender's*.

Q. Who paid the bill?

A. Ecod, I do not know; I drank very little.

Q. Being dry, you drank but little?

A. Drank! a man might drink little, and take a great drink afterwards.

Q. Recollect yourself; perhaps, you were confused?

A. Not in the least confused.

Q. You conversed about *Dublin*?

A. No; but *Matheivs*, whom we met on the way, asked was there any disturbance in *Dublin*, and my brother said, none as we left it.

Q. How far did you go?

A. We separated at the cross roads; he went to a friend's house, and I went home.

Q. At what hour did you separate?

A. A little after 9 we left *Pender's*—no, not *Pender's*; but *Delany's*—then we went to *Jobstown*. I could not know the time we separated.

Q. But, as near as you can guess, what time was it when you separated?

A. It could but be near eleven o'clock, when we separated.

Q. You went home to relieve your mother from her anxiety, what was it for?

A. To satisfy them, he was not engaged in any business in *Dublin*, that was likely to be.

Q. Did it not occur to you, that his appearance would satisfy them equally, if not better, than your story?

A. My story was as good as his appearance.

Q. What prevented him from going?

A. He was fatigued.

Q. Why, I thought you were in a worse situation for walking than he was?

A. Oh, I had only a clap, which did not prevent me walking.

Q. Then

Q. Then you say, he tired first?

A. He did.

Q. Where did he go?

A. I did not go there.

Q. But what was the name of the friend's house he went to?

A. *Joseph Grimes.*

Q. How far is that from the *Cross-roads*?

A. By God, I can't tell.

Q. Do not swear, fir, but make a computation of the distance?

A. It is not less than a mile and a half.

Q. How far is it from the *Cross-road* to *Rathcoole*?

A. I do not know the situation, must I recollect, it was night, and to cross the hill by the road would be two miles.

Q. But the short way that you went, how far would it be?

A. It could not be less than two miles.

Q. So your brother was so much fatigued, that he could only walk a mile and a half to *Grimes's*, and was utterly unable to walk two miles to your father's house?

A. But sure two miles and a quarter would be more than that.

Q. Were you ever examined by any one as to the testimony you were to give?

A. I was.

Q. By whom?

A. By the agent.

Q. How many persons were present?

A. By God, I can't tell, because it might be done by him alone.

Q. How many persons were present, by virtue of your oath?

A. I was not questioned by virtue of my oath.

Q. Did he examine you in any way?

A. He did; he took my deposition.

Q. Who were present?

A. I cannot tell how many,

Q. Were there some?

A. There were.

Q. Were any of the witnesses who were examined this day present at that time?

A. They were;

Q. At

Q. At what hour, did you arrive at your father's house?

A. It could not be less than twelve o'clock.

Q. How soon after did you see your brother by virtue of your oath?

A. I saw him the next day, and I saw him the *Monday* after.

Q. Did he go to your father's house on *Sunday*?

A. He did not; but I was at prayers, and I heard from him.

Q. By whom?

A. From the man of the place; my brother was so much fatigued with the walk, that he did not come out.

Q. Was he so much fatigued that he could not walk to your father's?

A. He might as he chose, that rested with himself.

Q. What clothes had he on?

A. He had a dark coat on, coloured waistcoat, white neckcloth, nankin pantaloons and round hat.

Q. Look at the coat now upon him, that is a dark green?

A. It is a dark coat.

Q. How soon after did he go to your father's house?

A. In about a week.

Q. What was his usual place of residence before the 23^d of *July*?

A. On that day I saw him in *Dublin*.

Q. In what street did he lodge?

A. I do not know.

Q. Where did you see him?

A. I generally saw him in *Thomas-street*.

Q. Where did he live?

A. He lived that evening at *Thomas-street*.

Q. You did not know where he lived?

A. I did not.

Q. Was not the purpose of your coming to town to take him away from the mischief that was expected, and yet you say you did not know where he lived?

A. I knew where to find him in *Thomas-street*, where I often met him.

Q. Do you persevere in saying you did not know where he lived?

A. I do not persevere.

Q. What

- Q. What business did he follow?
A. He was clerk to a brewer.
Q. With whom?
A. Mr. *Robinson*.
Q. Will you swear that he lived with *Robinson* at that time?
A. No, I will not.
Q. So you cannot swear where he lived at that time?
A. He lived that evening at my brother *John's*.
Q. And you never heard where he lived?
A. I might have heard it and not remember it.

Joseph Grimes,

Examined by Mr. CURRAN.

- Q. Do you know the prisoner?
A. I do.
Q. Where do you live?
A. In *Saggard*.
Q. Do you remember the night of the 23d of *July*?
A. I do.
Q. Did you see the prisoner upon that night?
A. I did.
Q. Where did you see him, and at what hour?
A. He called at my house between eleven and twelve at night.
Q. Do you know where he slept that night?
A. I do.
Q. How was he dressed?
A. In a dark coat, nankin pantaloons and boots.
Q. Where did he sleep?
A. In my place the remainder of the night.

Cross examined by Mr. TOWNSEND.

- Q. Is the prisoner an old acquaintance of yours?
A. I have known him twelve or fourteen years.
Q. Do you know his father well?
A. I do.
Q. How far is his place from yours?
A. About two miles to go the road.
Q. Which of the places is nearer to *Dublin*?
A. Mine is.

Q. Have

Q. Have you a watch?

A. No.

Q. Have you a clock in the house?

A. No, but there was a watch.

Q. Who had it?

A. I had it; a neighbour had sent me his watch to have the chain repaired, I did not leave it.

Q. What chain do you mean, do you mean the inside chain, or the chain it is held by?

A. The inside chain.

Q. Were you in town on the night of the 23d?

A. No.

Q. Were you in town that day?

A. No.

Q. Were you the day before?

A. No.

Q. When were you in town before the 23d of July?

A. Eight or ten days.

Q. How far from town do you live?

A. Seven miles.

Q. What employment do you follow?

A. I have some land.

Q. Who lent you the watch?

A. One *Mahon*.

Q. Who is he?

A. He has some land.

Q. Where was he at that time, was he at your house?

A. No; he was at home at his own house.

Q. Was the watch going at the time?

A. It was going that evening.

Q. Had you got the watch repaired?

A. Yes.

Q. Is there any cross-road near your house?

A. No.

Q. What is the nearest cross-road?

A. It is in the town of *Saggard*.

Q. Was your neighbour *Mahon* sick at that time?

A. No.

Q. When did you see him?

A. That day.

Q. Why not give him his watch?

A. He did not ask me.

Q. You

Q. You had it repaired for a fortnight and never told him it was repaired?

A. I did not.

Q. Nor give it to him?

A. No.

Q. The prisoner is a great friend of yours?

A. Not more than any other neighbour.

Q. How long did the prisoner remain with you?

A. The remainder of that night.

Q. No longer than that?

A. No.

Q. Where did he go to?

A. He told me he was engaged to his father.

Q. His father lived two miles from you?

A. He did.

Q. You went to prayers the next day?

A. I did.

Q. Did you see any of the family of the *Rourkes*?

A. I did not.

Q. Did you see any of the *Rourkes* the next day?

A. I did not.

Q. Nor on *Monday*?

A. I did not.

Q. When the prisoner came to your house was he fresh and well or was he tired and ill?

A. He complained of being fatigued with the road and wished to stay the remainder of the night.

Q. (*By a Juror.*) What chapel was it you went to?

A. The chapel of *Saggard*.

ELIZABETH DOYLE,

Examined by Mr. PONSONBY.

Q. Do you recollect the 23d of July?

A. I do.

Q. Did *Mabaffy* lodge in your house?

A. He did for a month before; on the morning of the eruption he said there would be fun that night, and; he would work, and he put himself in an attitude to show how he would act; I said, there would be no such thing, that they had got enough of it; I said to myself he was a rebel, and only he was just out of bed I would have thought him drunk or deranged.

Q. You

Q. : You would have thought him drunk ?

A. I would have thought he was drunk, only that I saw him getting out of bed ; he had something shibcking in his countenance and I said he was a rebel, and I was determined he should sleep no longer there ; he said, God be with you, in the evening, and left his bundle ; in an hour or two after, a woman came in and said there was a crowd in *Dirty-lane* ; that they were all strangers, and that there was something in contemplation among them, that they were all country people ; what matter, said I, what can it mean ; and before she left the place there was a cry of an *eruption*, and the woman screeched and was alarmed, how to get to her husband and her child ; and this *Mahaffy*, I know to take his oath against liquor ; he and his comrade fell out four or five nights before this *eruption*, and being vexed with one another, I said I would get shut of them : they went to bed, having made peace, and *Mahaffy*, in the morning took my prayer book, and I followed him to see what he was going to do, and he took an oath that he would not drink more than a pint and a glass, and the next night he came in as drunk as ever, and the next morning after, he said there would be an *eruption*, and I said with God's will it would not be, and I was determined not to let him in again ; I did not expect to come here till I got the summons.

Cross-Examined by Mr. MAYNE.

Q. : You were not willing to come, Madam ?

A. I did not like to have any thing to do with it.

Q. : You would not have come upon request ?

A. I did like to come, nor would I have come but for the summons.

Q. : When were you served with the summons ?

A. This day early in the morning.

Q. : You would not let the witness come into your place, you say ?

A. No, because I thought I saw murder and every thing that was bad in his countenance, and I said only he was out of bed I should think him deranged or drunk.

Q. : You did not send any box with him ?

A. He had no box, but goods, which belonged to his comrade, who is a quiet and honest boy.

Q. : What

Q. What is his name?

A. John Ryan.

Q. Was Mahaffy the only person about Thomas-firstet who spoke of the business that was to be that night?

A. He was the only person I heard speak of it.

Q. When did you find it true?

A. Between 9 and 10 at night.

Q. And you did not hear a word from any other person?

A. Only the woman, who said the people were collecting.

Q. Do you think Mahaffy took you for a rebel?

A. I think not, he did not, for he could not.

Q. There were other people present in the morning?

A. There were.

Q. And because he told you this business, you immediately set him down for a rebel?

A. I did.

Q. It was from his looks, more than from what he said, that you formed a judgment?

A. From both.

Q. Who served you with the summons?

A. I do not know.

Q. How came you to be sent for?

A. A friend of the prisoner hearing me tell this matter took recognizance of the words and sent for me.

Q. How came it to be known, that your knowledge of Mahaffy related to the prisoner, or that Mahaffy knew any thing of the prisoner?

A. I cannot tell that.

Q. Did any one tell you, that Mahaffy knew any thing of the prisoner?

A. I cannot tell.

Q. How came you to know that any account of Mahaffy related to the prisoner?

A. I know nothing of that, only from my telling the matter.

Q. But that did not appear to relate to Rourke?

A. I cannot say.

Q. Did Mahaffy say he would return in the evening?

A. He did.

Q. And he did return and gave you a bundle?

A. Not to me, but he left it there.

No. 7.

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Q. You

Q. You did not tell him then to take it away

A. No.

Q. You know *Rourke* a little?

A. Only by sight.

Q. You have often seen him?

A. Never but twice.

Q. And you live in *Dirty-lane*?

A. Yes.

FRANCES MURTAGH,

Examined by Mr. CURRAN.

Q. You are the daughter of *Elizabeth Doyle*?

A. Yes.

Q. Do you recollect the 23d of *July*?

A. Yes, sir.

Q. Were you on that day in your mother's house?

A. I was.

Q. Do you know a man of the name of *Mahaffy*, a pedler?

A. I do.

Q. Do you recollect to have seen him at breakfast that day?

A. I do.

Q. Do you recollect any conversation that passed?

A. I was in and out in the room, and heard him telling his comrade of the breaking out that was to be that evening; that there was to be a rebellion, and he was ready and willing to behave as any rebels would, and he put himself in an attitude to shew how he would work, and my mother said he was mad and wished to have him away.

Q. She did not say that to his face?

A. No.

Cross-Examined by Mr. ATTORNEY GENERAL.

Q. You and your mother are very loyal women?

A. We wish to be honest.

Q. And you would detect and punish rebels and persons concerned in rebellion?

A. We would.

Q. What magistrate did you apply to in order to give information of *Mahaffy*?

A. It was on the same day.

Q. But

Q. But it was in the morning?

A. We thought the like never would be in *Ireland*.

Q. The next morning was *Sunday*, you had no doubt then that what he told you was true?

A. I did.

Q. What magistrate did you go to upon that day to tell this matter?

A. To no magistrate; I was too much disturbed in my mind; and thought every moment would be my last.

Q. On *Monday* morning you were a little more collected?

A. I have no more to say, than I have said; I did not wish to have any thing to say to any man.

Q. You did not think that a rebel should be hanged?

A. I do, I would be glad to have it quelled, because it is the ruination of *Ireland*.

Q. You did not lodge any information from that time to this?

A. No.

Q. Neither did your mother?

A. Not to my knowledge.

Q. When were you first applied to, to give evidence on this occasion?

A. I cannot tell that.

Q. How long ago?

A. I cannot be considerate to tell the time.

Q. When were you first applied to?

A. When all the witnesses were given in we got a *subpœna*.

Q. When were you first applied to, as you answer in the presence of God?

A. I believe it was last week, but I cannot say; it was at the same time with all the rest.

Q. Who first applied to you?

A. I'll tell you; I was repeating what this man had said in a room in the house, and did not think I should come on the Green Cloth about it, and a person told *McCann* that I said those words of *Mahaffy*, and I got a *subpœna*.

Q. What did you know of *Mahaffy* and this trial?

A. I cannot say what to call him, he is as drunken and violent a wretch as ever I heard of, he is no better than a robber, and a perjurer.

Q. He

Q. He was your lodger?

A. He was; we were waiting to get him away; he mentioned the injustice of *McCann*.

Q. What was that?

A. Before the rebellion was spoken of, *Mabaffy* owed *Keegan* £11. and he said that *McCann* had set him for *Keegan*, and he said "that dead or alive he would be revenged of *McCann* before a month was about."

Q. When did you first hear of this circumstance?

A. The morning before the rebellion.

Q. But when did you hear of this circumstance of *Keegan's* intention to arrest *Mabaffy*?

A. A fortnight before the 'eruption.

Q. What sort of a lodger was *Ryan*?

A. I have nothing to say against him.

Q. Is he an honest man?

A. It is hard to say for honesty.

Q. Is he a man to be believed upon his oath?

A. I cannot say; I heard he swore against drink, and I cannot answer for him, or that he was a perjurer.

Q. Which of them is the worst?

A. I never heard any thing more of *Ryan* than that, but every one said *Mabaffy* was a robber and a perjurer.

Q. Which did you hear worse of *Mabaffy* about three weeks since the rebellion than you had heard during three months before?

A. I did not know him three months, but I heard he sold pinchbeck rings for gold ones, and that he sold waistcoats to countrymen, and stole them again.

Q. Are you acquainted with *Rourke*, the prisoner?

A. I never spoke seven words to him.

Q. In what house did you speak to him?

A. In no house.

Q. Where did you speak to him?

A. In *Thomas-street*.

Q. What passed?

A. He asked me, how I was, and I said very well.

Q. Was that the first interview you ever had with him?

A. It was.

Q. Are you acquainted with *McCann*?

A. I am a long time.

Mr. CURRAN. My Lords, I object, to any evidence being given respecting *McCauley*; he is not upon trial.

Mr. ATTORNEY GENERAL. I have no objection to the witness retiring.

CORNELIUS M'KERNAN,

Examined by Mr. CURRAN.

Q. Do you know *McCauley*, the pedlar?

A. I know a man of that name was in the *Kildare* militia.

Q. How long ago?

A. Five or six years since.

Q. Have you any doubt of his person, would you wish to see him?

A. I think I saw him to-day; I believe it is the same.

Q. Did you know his general character?

A. I heard it pretty often.

Q. From what you heard of it, do you think he is deserving of credit upon his oath, in a court of justice?

A. I do not wish to say much upon the matter.

Q. You must give an answer one way or another?

A. I do not think him deserving of credit upon his oath.

Cross-Examined by Mr. PRUNNET.

Q. What are you?

A. At that time I was a cotton manufacturer.

Q. What are you now?

A. I am now in the public business.

Q. Where do you live?

A. In *Balbriggan*.

Q. How long since you left it?

A. At 9 o'clock in the morning of this day I left it to come here, and on *Thursday, Friday, and Saturday* I came also, being served with a summons.

Q. You came willingly?

A. By my oath I would not have come had I not been served.

Q. Why, you knew the prisoner?

A. I never seen him till this day.

Q. When

Q. When did you first mention that you knew *Mabaffy* to be such a villain?

A. During the time of his stay in *Balbriggan*.

Q. But when was it, that you mentioned to any body that you knew *Mabaffy* to be of an infamous character?

A. I do not recollect that I mentioned it to any body till I was *subpœned* and came here.

Q. But you did mention it before you were served with a *subpœna*?

A. If I were to be asked five hundred times, I do not recollect whether I did or not.

Q. And if you did not, how came you to be served with a *subpœna*?

A. I do not know, for before they asked me a question, they handed me a *subpœna*,—not to me, but to my wife, which was equally the same.

Q. They had got no information against *Mabaffy*?

A. Not from me, but from another, who was in the army along with him, as I heard they were enquiring about him, not before they sent the summons, because it was when they enquired any thing they sent the summons.

Q. But if the prisoner had not been in *Thomas-street* on the night of the 23d, how could he know any thing of *Mabaffy*?

A. I do not know.

Q. On whose behalf was the summons served?

A. We were summoned to tell the truth of what we knew of his conduct.

Q. But on whose behalf were you summoned?

A. I was summoned to tell the truth.

Q. Where have you resided since you came to town?

A. I was not in a house since I came to town but where the coach stops in *Bolton-street*, and from that we walked.

Q. Who was with you?

A. Mr. *Murphy* came in another coach; we then went to Mr. *Newman's*, and enquired about the trial's going on, and finding it was, I came here.

Q. Where did you sleep when you were in town before?

A. At my sister *Ryder's*, in *Townsend-street*.

Q. Where did you dine?

A. Ecod, in two or three different places.

Q. Where

Q. Where first?

A. In *Cook-street*, nearly opposite the *Strugglers*.

Q. Who dined with you?

A. Nobody; I dined alone.

Q. Who dined with you?

A. I can't tell.

Q. Who dined with you the third time?

A. I cannot rightly recollect. On *Friday* I did not dine any where.

Martin Connor,

Examined by Mr. CURRAN.

Q. Do you know a person of the name of *Mahaffy*?

A. I do.

Q. Did you see him upon the table to-day?

A. Yes.

Q. Did you know him?

A. I did for eight years; he was in the same employ with me four years.

Q. Do you know what his general character and reputation were?

A. He most commonly bore not a very good character.

Q. From the general character which you found abroad of him, do you think him deserving of credit on his oath?

A. No, I do not.

Cross-Examined by Mr. TOWNSEND.

Q. Is that the reputation of his regiment generally?

A. There are officers in the regiment who might give him a better character than I do; but I speak as I think; they had an opportunity to know him better than I do.

Q. What corps do you belong to?

A. To the *Sandymount* Corps.

Q. When did you join it for the first time?

A. The fourth of *August*.

Q. Where do you live?

A. In *Ringsend*.

Q. They were the strongest side after the 23d of *July*?

A. No, sir, I do not think it was.

Q. Then

Q. Then you thought the rebels were the strongest?

A. No, you take me short, the corps is the strongest side, and always will be so.

Q. But you did not take a fancy to join the corps?

A. I was applied to from my good character to join it.

Q. How did it happen that the prisoner knew any thing of you?

A. I cannot tell.

Q. When were you first applied to?

A. When *Mahaffy* came to town.

Q. Who applied to you?

A. One *Keegan*.

Q. Did he tell you for what?

A. No.

Q. By virtue of your oath?

A. I have taken an oath already, and will not answer more.

Q. By virtue of your oath, can you form a belief, on whole behalf *Keegan* applied to you?

A. He applied to me, to know what I could say of him.

Q. On whose behalf?

A. On the part of the prisoners.

Q. Which of them?

A. I cannot say.

Q. Was it on behalf of all who have been tried?

A. No, but the three who are now trying.

Q. (*By the Jury.*) You said you did not think *Mahaffy* to be worthy of credit, why?

A. Because I saw him do things that were not proper: I was sitting in a public house in *Bailbriggan* one evening, and he sold a waistcoat to a gentleman who was sitting there, and he afterwards stole it from him; and enquiry was made, and it was found under the seat where *Mahaffy* sat.

Q. (*By the Court.*) Did you see *Mahaffy* take it out of the man's pocket?

A. No, but I saw him throw it down.

Q. Did you speak of it at the time?

A. No, but I saw him take it out of his own pocket, and the man of the house interfered, and that was enough for me.

PETER KEEGAN,

Examined by Mr. CURRAN.

Q. Do you know *Michael Mahaffy*?

A. I do.

Q. Have you known him long?

A. I have.

Q. Do you know his character?

A. I do.

Q. From your knowledge of his character, do you in your conscience believe, that his oath is deserving of credit in a Court of Justice.

A. I would not believe his oath; I saw him break his oath, and he should not be believed.

Cross-Examined by Mr. PLUNKET.

Q. Are you acquainted with the prisoner?

A. No.

Q. You have no particular interest or reason to be anxious for him?

A. No, only I was summoned.

Q. Without that, you would not have come?

A. No, sir.

Q. Being served, you thought it your duty to come?

A. I came here.

Q. You did not mention any thing of the matter until you were served with the summons?

A. No, there was no necessity.

Q. Were you summoned on behalf of the prisoner, or any other persons?

A. No, only to tell the truth.

Q. Nor you never exerted yourself to procure the attendance of a witness?

A. No.

Q. Do you know *Martin Connor*?

A. I met him in *Patrick-street*, and he called to me to take share of some port and water, and he told me of this *Mahaffy* doing improper things.

Q. Then your meeting him was mere accident?

A. I was there buying beef-stakes, it was mere perchance, and one *Lynch* was there, and it was with reluctance I went in, but he pressed me.

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Q. Where

Q. Where was this?

A. More than a fortnight going on three weeks.

Q. If *Connor* swore, that he made the declaration respecting *Mabaffy*, in consequence of your application to him, would it be a lie?

A. I do not understand you.

Q. I will put the question again; if *Connor* were to swear that he spoke of *Mabaffy* in consequence of your applying to him, would he tell a lie or not?

A. I do not understand you.

Q. (The question was repeated again.)

A. I cannot say whether it would be a lie, or not.

(Here the case was closed on behalf of the prisoner.)

John Thornbury, produced on behalf of the crown,

Examined by Mr. MAYNE.

Q. What regiment are you in?

A. In the *Kildare* militia.

Q. How long have you been in it?

A. Nine years.

Q. What rank do you hold?

A. A corporal; I was originally a drummer, and was employed in the band, and was afterwards made a corporal.

Q. Do you know *Mabaffy*?

A. I do.

Q. How long was he in the regiment?

A. Four years.

Q. How came he out of it?

A. He was discharged, having served four years.

Q. Did you know his general character in the regiment?

A. He was a dirty man; he never kept himself as clean as any other soldier.

Q. Had he any villainous or infamous character?

Mr. CURRAN. Surely, that is not the form in which the question should be put.

Mr. MAYNE. It is directly *ad idem*; the point examined to on the part of the prisoner was whether the witness had an infamous character, to that very point I interrogate this witness—but I will put the question in another shape.

Q. What

Q. What was *Mabaffy's* general character in the regiment?

A. His general character was that I knew nothing dishonest of the man, and he was considered a loyal man.

Cross-examined by Mr. CURRAN.

Q. Have you a summons in your pocket?

A. No, sir; I was ordered from *Belfast*.

Q. That must be a mistake, when did you get the order?

A. On *Thursday*.

Q. Did you understand what it was about?

A. I was applied to by my officer to know if I knew any thing of *Mabaffy*; he was written to.

Q. Do you think he was written to?

A. I believe so, I brought a letter to Mr. *Kemmis*.

Q. Do you think any gentleman said that *Mabaffy* would get an infamous character?

A. I did not hear that, but I obeyed my orders; my officers asked me, did I know any thing of him, and upon telling him what I did, he said I must attend the trial in *Dublin*.

Q. And he sent you to Mr. *Kemmis*?

A. I believe so, because I was to give him a receipt for my expenses.

Q. Did you not think it was a cruel thing to say of *Mabaffy*, that he was a ring dropper?

A. I heard no such thing said by the officer.

Q. But did the men talk unkindly of him?

A. I never heard the men speak unkindly of him.

Q. You never heard of the waistcoat?

A. Never, till this day when *M^r Kernan* asked me, did I remember about the waistcoat dropping from under the chair; I said I did not, I remember *M^r Kernan* since we lay at *Balbriggan*.

Q. You were a drummer once?

A. I ranked as one.

Q. Why, one would imagine you made so much noise that you could not hear of the man's character?

A. I never beat a drum; I only ranked as a drummer.

Q. Did any other person come up with you?

A. No.

William

William Bellingham Swan, Esq.

Examined by Mr. SOLICITOR GENERAL.

Q. Do you recollect receiving information from Lord *Castle-Coote* respecting the discovery of two persons in the *Queen's County*?

A. I do; he sent me the informations of *Mahaffy*; they were irregular and I sent them back.

Q. Do you recollect any thing of a man of the name of *Killen*?

Mr. CURRAN. This evidence cannot be admitted.—Major *Swan* cannot give parol evidence of the contents of any written informations, neither can he state any thing which was communicated to him by Lord *Castle-Coote*.

The Counsel for the Crown yielded to the objection and the witness retired.

Mr. PONSONBY.

My Lords, and Gentlemen of the Jury,

The law of this land gives to a prisoner, indicted for High Treason, certain privileges, which it does not give to a man indicted for smaller offences; but the law of this land does not give him all the privileges which the legislature of *Great Britain* gives to persons who are indicted there.—Among the privileges which are given him here, is a right to have two counsel to assist him in his defence, and as the prisoner has chosen me, as one of these, I rise to discharge the duty which I owe him upon this occasion. I rise under circumstances of peculiar difficulty, because I know an event has attended the insurrection which took place in *Thomas-street*, on the 23d of *July*, which has made a deep impression on the mind of every man. The circumstance I allude to is, the shocking, and never enough to be lamented, murder of the deserving and unfortunate Lord *KILWARDEN*, and his nephew. That circumstance has, I fear, made so strong an impression upon the mind of every man of feeling and honor in this city, that it is next to impossible to find an impartial jury. I am sure, from your characters, that you mean to be impartial; from my knowledge of the court, I am convinced, it means to be impartial; and as far as the feelings of human nature allow, both will discharge their duty:—but I fear, that without
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knowing it yourselves, you entertain a prejudication against every man accused of this offence, and therefore I rise under peculiar difficulty, because I rise before a tribunal, that entertains a prejudice against the party upon his trial, even before they hear the evidence against him. That increases the difficulty which the advocate would have to contend with in defending his client against the charge contained in the indictment, were it unconnected with that sad transaction—and, Gentlemen, I ask you now to search and examine your own hearts; have you ever heard, before you entered that box, any thing to the prejudice, or against the character of the prisoner? Has any circulating report reached your ears, and received even a momentary entertainment of belief? Search your hearts, and say, whether you are not so afflicted and wounded by the reflection upon the horrid circumstances of that night, that if you have heard insinuations out of court against the character of the prisoner; may they not make impressions fatal to his life? Are not the circumstances of this case so extraordinary, that impressions may be made upon your mind, deep and irremovable? And does it not therefore become requisite and necessary, that you should exert yourselves, and fling, as it were, from your recollection every thing which you have heard upon this subject, and to know nothing of it but what has been sworn this day in your presence.

Gentlemen, the prisoner is indicted for participating in that insurrection; he is indicted for treason in his conduct upon that night; and if the evidence against him be by you believed, there is no doubt, you will find him guilty of treason:—but I must say this, that that evidence could not convict a man in *England*, because the law of *England* does require two witnesses to the proof of every overt act of treason, except in the case where the assassination of the king is in contemplation; for there the law has been changed by a late legislative provision, and one witness is sufficient; but so tender has the law been of the life of the subject; so sensible of the possibility of a witness setting up a fabricated story, from motives of interest or malice, that even that law, which provides against an attack upon the life of the sovereign, is limited to the life of the present king, and upon his demise, the old law will again prevail and even in the meditated assassination of the king, the law will stand as it did before the statute passed. If therefore this prisoner were indicted in *England*, *Mahaffy* never

never could have been produced before an *English* jury; because it would not be competent by his single testimony to procure the conviction of the prisoner.

Gentlemen, the first witness, in the course of his examination, swore to circumstances which produced a strong effect and emotion upon myself; and if his testimony had that effect, how much stronger must it operate upon you, and the judges who preside? He swore, that when the carriage of Lord KILWARDEN was coming down, *Rourke*, the prisoner, called out ———

Mr. Baron GEORGE.—Mr. *Ponsonby*, you have mistaken the evidence in that respect; the witness did not attribute such conduct to the prisoner.

Mr. PONSONBY.—I must be mistaken, since the court has been pleased to interpose, and correct me; I am glad the witness did not swear to that circumstance; because the bare mention of the fact would transport any jury beyond all bounds of consideration.

(Mr. Baron GEORGE here stated from his notes the evidence of *Mahaffy*, as to the transaction in *Thomas-street*.)

Mr. PONSONBY,—*Gentlemen*, I do not mean to disguise or attempt to conceal any thing from you; my great object in my preliminary observations is to prevent you, if possible, from prejudging the case, and to prevail upon you to discharge from your minds every thing you may have previously heard, and to consider this case, merely upon the evidence: that you have an inclination to do so, I am sure; I am confident, from your character, that it is your wish, and that you will endeavour to do so; but I know full well how hard it is for men, living in the city, and hearing the transactions of that night, to discharge themselves from every impression, and to bring to the trial of accused persons, minds which shall be like blank paper; as Lord MANSFIELD says, paper without characters, until the evidence shall describe characters upon them.

The accusation against this man is, that he acted in *Thomas-street* that night; his defence is, that he did not act there, and that he could not act there, because he was not there; this defence amounts in law to what is commonly and vulgarly called an *alibi*; and I know, that men who are unacquainted with law, or the rules of evidence,
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are among the most forward to sneer at such a defence—to throw up their eyes—to elevate their chins—and to signify by their gestures, as they cannot by argument, that a man making such a defence acknowledges his guilt; that it is a confession of the truth of the charge brought against him.

But, Gentlemen, before you give way to observations of that sort, you will consider what the nature of the evidence is; I will suppose a matter, very improbable indeed, if not impossible, that one of you stood indicted for acting in *Thomas-street* upon that night; and that a witness swore positively, that he saw you directing those rebels in prosecution of the treasonable purpose; how should you defend yourself? Would you say, I appeal to the King's ATTORNEY GENERAL; I appeal to every man acquainted with me, to say, whether they think it is possible I was there? I appeal to all my neighbours, who are acquainted with the whole conduct of my life—would they believe such a transaction? The ATTORNEY GENERAL would reply, “that he thought it improbable, when the accusation was made; but a witness has sworn positively and directly to your being there, and as he comes forward to give testimony in a court of justice to prove that you were there, I cannot reject this evidence; it is a duty I owe my Sovereign, to put it into a course of investigation; your neighbours think as I do, but that can do you no service; when your trial comes on you may call them, and you may appeal to a long course of life, irreproachable, and meritorious; but here is direct and positive allegation of guilt sworn to by a man who is ready to prove it; that charge you must meet and repel, if you can, by evidence; but your character your general demeanor or meritorious conduct are no answer to that positive and direct accusation.” -What would be your defence? exactly the same, which the prisoner has made; and I defy the ingenuity of a lawyer to point out any other; I do not say, that it is not easy, or probable; but I say it is impossible. I say without the power of contradiction, that the sole defence which you could set up in exculpation of yourselves would be an *alibi* defence; you would prove, that you could not be guilty, because you were not in the place in which the crime was alleged to be committed; and to give credit to that defence, you would prove, that the single witness who had sworn against you was not sufficient to outweigh the positive depositions of all these,
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who had proved you were not there. The law of the country, and the scope of the talents of professional men, could not point out another defence. Human ingenuity cannot furnish another; and therefore before you condemn any man, or entertain a prejudice against any man, contemplate for a moment upon this, that it is the only defence, which by possibility he can make. If there be found a man depraved enough to swear to a particular time, and to the participation of an individual in that fact, the latter can make no other defence, but that he did not participate; because it was impossible, not being in the place where it happened. Whom then would you have to call upon in your defence? What are the ways in which most of you pass your evenings?—in your families, among your friends, or acquaintances, a greater portion of your lives is spent in that intercourse; who then can be the witnesses to prove where any particular man was at any particular time? who, but that family and those friends and acquaintances; and if you previously condemn the defence, because the witnesses may consist of the family or friends, you are to pass a general sentence of condemnation against every man, whom a profligate individual chooses to make the subject of his charge; because, I refer you to your own experience, that when such a charge is made against any man, the witnesses in his defence must, in nine cases out of ten, consist of the description I have mentioned; and therefore it is no ground of objection, that the defence consists of an *alibi*, or that the witnesses to prove it are members of the family of the accused. See how these observations apply to the evidence which has been given. One witness only has sworn to his seeing *Rourke*, the prisoner, in *Thomas-street* that night; and it is somewhat remarkable, that this poverty of evidence should attach upon a person in the alleged situation of the prisoner; because in no other case, that has come before this court, has there been such a defect of evidence; it is strange, that if the prisoner really was in *Thomas-street*, it was not possible for the Solicitor for the Crown to prove it, by a greater number of witnesses: but see what are the circumstances, which relate to *Mahaffy*, and the story which he has told:—he says, that he and his partner walked out casually in the evening to refresh themselves in *Dirty-lane*; and soon after he got out, he found himself in a crowd of persons; that the prisoner was there with a blunderbuss in his hand, and ordered him to accept of arms, to
make

to make part of the body and to follow his instructions; and in a short time, after stating the death of the watchman and the soldier, he and his companion made their escape from the crowd, and at day-light found themselves at *Tallagh-hill*!

Gentlemen, I do not discover that Mr. *McCright*, who was forced, by this riotous mob, to take a pike, acted any part in their transactions, or found it necessary to escape from town, and fly to *Tallagh-hill*: if the witnesses were perfectly innocent and had taken no part to expose his life to the consequence of an accusation, why not return to town, make a declaration of what happened, and prove the guilt of those who forced him into the transaction? but it appears from the testimony of *Ryan*, that the sense of their own guilt operated so strongly upon them that they could not return, and they proceeded on till they arrived at *Mountrath*. He says indeed, that it was fear prevented him from returning; but let me ask you, is it very credible? Do you think that an innocent man, who had been forced into business of this sort against his will, from a fear of the force, which had been exercised upon him, would keep himself in motion for forty-seven miles together? that so far from reflecting upon the propriety of disclosing it, or seeking for a magistrate, a friend, or a military man, they avoid them all, and fear so operated upon their understanding, as to keep them in a state of flight till they were arrested in *Mountrath*; there it appears, they were examined several times; and at length they gave information before lord *Castle-Coote*, who acted as a magistrate, examined them upon oath, and heard what they had to say; whether they told upon the first interview, that they were innocent men, forced to take pikes, or offered to give evidence against others, I do not know; lord *Castle-Coote* might have been produced, and there is no good reason for not examining him upon this occasion, because his evidence, when the character of these witnesses is attacked, would, if the facts had borne them out, be the strongest corroboration they could have; and therefore I take for granted in the course of this conversation something did appear which it might not be prudent to disclose, by the examination of his lordship. But I ask you, which is most probable, that this man, *Mahaffy*, was such as he described himself to be, or was not rather a participator in the guilt of this transaction, and after his retreat from *Dublin*, now thinks proper to save his own life, by sacrificing that of another?

Can you believe that he was a perfectly unoffending man, acting only under the impression of force? for the law is not so unreasonable as to consider him guilty, if that were the case; see what was the conduct of *McCraight*, a respectable witness, under circumstances of that kind: he had been forced to take a pike, and to march with the insurgents; but the moment he escapes, he came forward to give intelligence of the transaction; whereas these two witnesses fly and continue their flight, until they are stopped by an arrest: did not that arise from a consciousness of guilt and a fear of discovery from those very women in whose company *Mahaffy* made the declaration which he did the evening of the 23d of July, confident of the success of his party; and afterwards suggested this contrivance to save himself from death. Which, I say, is most probable, or conformable to general and ordinary experience. There are in the human heart and character many and great degrees and varieties of depravity; from perfect virtue to perfect vice, the scale is almost incalculable, and would perplex the nicest judgment of the greatest moralist to discriminate exactly the different moral qualities of the several witnesses, who have been produced: *Ryan* you see would not swear to his seeing the prisoner, or indeed seeing any body; his fears were such as almost totally to deprive him of sight; from the time of his seeing the blunderbuss, he did not lift up his head or raise his eyes: but he heard the name of *Rourke* among the people; so that you perceive *Ryan* was not disposed to go so far in his testimony, as *Mahaffy*; he had not probably advanced to the same extremity of guilt, therefore it was not necessary for him to go so far: I suppose there was nothing to tempt him; but allowing that what he swore was perfectly true, what is there, but his hearing the name of *Rourke*? might there not be many persons of that name? What degree of guilt can that attach upon the prisoner? In truth, I say it with deference to those who conducted the prosecution, it was scarcely fair to give evidence of that kind: does the declaration of *Ryan*, who could not see, but stating that he heard the name of *Rourke*, does that afford the smallest evidence of the guilt of the prisoner? It is one of the most common names in this country, there are hundreds of persons of that name in and about the city; and yet that mere circumstance of having such a name is brought forward to prove the guilt of the prisoner. *Mahaffy* swore positively to the person of the prisoner,

prisoner, though he saw him but once before, yet in this scene of darkness and immense confusion and hurry he takes upon himself to swear positively to the person of the prisoner. On behalf of the prisoner, many witnesses have been produced; the object of the first set was to establish this position, that it was not possible for him, at the time *Mahaffy* states the transaction, to be there. Why? because he was with his brother fifteen or twenty minutes after eight: he was in *Thomas-street* at the house of his brother, and the wife of that brother is produced to prove the time of his leaving the house. We examined *Dalany*, to prove that the prisoner was at *Dolphin's-barn* at a quarter after nine; we examine persons to prove that at half after ten, he was five miles from the city of *Dublin*: another proves, that in a very short time after he was still further upon the road, and another witness proves where he passed the remainder of the night. A person has been produced, the prisoner's brother I admit, to prove that he went with the prisoner the whole way, until they parted at the cross-roads going to *Grimes's*, where the prisoner passed the night. Has any impeachment been thrown upon the character of any one of these witnesses? Some questions were asked them relative to the persons who made applications to them to give their evidence; I say it is no matter who made the application; when witnesses were produced to the character of *Mahaffy*, the same questions were put to them:—Who first applied to you to give evidence? I do not well know the meaning of this question, because I am unwilling to attribute to the advocate a disposition to do that, by insinuation, which he could not do directly; and therefore I am sure, insinuations of this sort have no impression. What matter who applied to the witness to give evidence: I presume the tendency of the question (but I beg pardon if I am wrong) is this, to shew that all the persons who gave evidence upon this occasion have been engaged for the purpose, or were implicated in the transaction, or well-wishers of the cause. Is the life of any man or the character of any man to be affected by insinuations of this kind? if any of you, gentlemen, stood at the bar, and men as high in situation have stood at the bar of a criminal court, if any of the judges (I beg pardon for the supposition, though even judges have stood upon their trial) if any of us were brought forward upon a charge founded in falsehood, how could we be safe, if insinuations of this sort were to affect our lives? If, in
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the trifling matter of a civil bill, direct testimony is required to affect the property of an individual, how much more necessary is it in the case of life, that the evidence should be positive, direct, and clear, and sworn by a man proved to be a credible witness, if his credit be attacked? Against these witnesses, who have been examined for the prisoner, no attack is made, but that which insinuation may furnish; not one of them has been proved to be guilty of any offence; not one is charged as a person unfit to be believed upon oath. Will you then discredit all these witnesses? and in favour of whom? in favour of a man, who is by many sworn not to be worthy of credit upon his oath—against whose character is given the testimony of the whole county *Kildare* regiment, except one individual, because if the fact would have supported them, the counsel for the crown would have produced the officers, and the non-commissioned officers, to depose in favour of his character: but out of the whole regiment one single man only can be produced, and he appears in consequence of a letter written by the Solicitor for the Crown to the commanding officer. Why was that witness written for? because the Crown solicitor, and there is no abler or more respectable man in his profession, knew that the character of *Mahaffy* would be attacked, and that witnesses would be produced to swear he was unworthy of credit. To resist which, he is able to produce one single witness out of the whole regiment—this furnishes negative evidence a thousand times stronger than the positive evidence adduced for the prisoner. Do you suppose, that a man, knowing this attack, capable of recurring to the advice of the crown lawyers in matters of difficulty, or delicacy, would have left untried the production of other witnesses to swear to the credibility of *Mahaffy*, and the fairness of his character? And after all their exertion, one man only is produced. Several have deposed against him; has any one then been discredited? Has any witness been produced to shew that they are not worthy of credit upon their oaths? Some of them are men whom I should conceive were well known to those employed for the crown; because some of them are in the service of the crown, and must have taken the oath of allegiance to qualify them for the situation. *Delany* is a member of the *Rathcoole* corps, since the first rebellion; and *Connor* is a member of the *Sandymount* corps, and was many years in the *Kildare* militia, and therefore, if there

was

was any ground of attack, there was ample opportunity to make it; but their characters are unsullied; and then the question occurs to you, do you think yourselves warranted in this case, to take away the life of a fellow-subject upon the testimony of a single witness, where that witness is met by the opposite testimony of so many persons, and swearing against him as you have heard this day.

I shall be told, perhaps, that *Mabaffy* is corroborated in many respects by *McCreight*, who said, there was a man in a scarlet uniform, and mentioned other circumstances, which were detailed by *Mabaffy*. I agree, that *Mabaffy* gave a corresponding account, and no man was better qualified to give that account, he being an active partizan, well knew the movements of the body, and if he had not himself marched as far as *Thomas-street*, he would not have afterwards marched to *Mountrath*; and if he were not conscious that he might be attacked himself, he never would have attacked the prisoner at the bar; and therefore you may safely believe him, when he states those transactions in which he took so active a part; but unless you believe what he has sworn with respect to the actual agency and presence of the prisoner on that night, those other circumstances signify nothing. Every man who was in the crowd might have supposed that *Mabaffy* was guilty.— Does any one suppose that Mr. *McCreight* was guilty?— and yet he swore to these transactions: The guilty man could also swear to the same transactions, while he gave a colour to his own conduct, in order to ensure his safety.

Gentlemen, you will observe, that the brother of the prisoner swore positively, he was directed by his mother to bring the prisoner from *Dublin*: that she did apprehend there would be a disturbance in *Dublin*; if she had any apprehension that her son had an inclination of mixing in that disturbance, or was likely to be suspected of it, it was wise and cautious to send for him. But unless you disbelieve this, and suppose it a fabrication, and that this account of his going home was false, and that the other witnesses, in their accounts as to the times and places of seeing him, are all guilty of perjury; unless you declare the whole of their testimony to be an absolute fabrication, you cannot find the prisoner guilty. But, gentlemen, if the guilt of the prisoner had been attempted to be proved by a man of irreproachable character, and his testimony

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was corroborated by foreign and extrinsic circumstances, (for it is worthy of remark, there is not a single circumstance in aid of *Mahaffy's* evidence) then there might be less doubt upon the case; but even then, you could not be justified in finding the prisoner guilty; because you must in that case find, that all the persons who have been produced by him, have been guilty of perjury; and it will be difficult to pronounce that, where so many have been produced, and the character of no one of them impeached. Would it not be more natural to suppose, that in the hurry and confusion of that night, the witness might be mistaken in the person of the prisoner?—And if there were any truth in the story of the blunderbuss being put to his head, might it not have such an effect as to prevent his taking a very exact view of the person who held it?—Under such circumstances of confusion, terror and dismay, would you not rather suppose that the witness was mistaken, than that so many persons produced for the prisoner could have sworn falsely? You will observe, that one only of the witnesses is related to him, and another connected with him by marriage: the rest have no relation or affinity to him. And surely it would be going a great way to presume perjury in all these witnesses, in favour of the oath of one single person, even supposing he were a respectable one. Is it not more natural to attribute the swearing of that witness to mistake, than that of all the rest to perjury?—But when you come to weigh the character of that person, do you feel yourselves justified in finding the truth of the fact to be according to his swearing, against the testimony of all the other witnesses?

The transactions which have taken place in this country are shocking: Some of the offences which accompanied them, are not only for ever to be lamented; but they carry a stain with them, which can never be wiped away; it is indelible. But whatever may be your resentment, compunction, regret, shame, or indignation—these feelings furnish no evidence against the prisoner at the bar. It is shocking, that such an insurrection should have taken place; it is disgraceful in the highest degree, that one of the ablest judges, and most upright men in the country, should have fallen a sacrifice to deluded men upon that occasion. But does that furnish evidence of the identity of any person who perpetrated, or assisted in those abominations? They may fill the mind with indignation, and pre-
pare

pare you to receive the accusation against any man!—the feeling is not peculiar to you, but is manifest in all your fellow-citizens; and therefore it becomes necessary to watch and be exact;—you are to watch your own hearts,—you are to suspect your judgments, and when you find your verdict, you are to take care, that it is not indignation against the murderers of poor Lord KILWARDEN that finds the verdict, instead of your own deliberate judgment, weighing the evidence, and deciding upon the evidence of *Mahaffy*.—Be sure of that.—Be sure, that as you live, the recollection of the verdict, if you incline to conviction, may satisfy you every day that you reflect upon it; and in the hour of death you can say, that no man wrongly died by your verdict.—Think, if you were in the prisoner's situation, how unjust it would be, to let even generous feelings weigh against your life. You are to decide according to the evidence:—it is your province, in which the court cannot interfere, and I am sure will not interfere respecting the credit of the witnesses;—that is your peculiar province, and you are bound to decide according to what you believe to be the truth of the evidence.

In the dying moments of poor Lord *Kilwarden*, when some persons supposed to be concerned in his assassination were brought into his presence, and the honest indignation of an attending magistrate proposed to lead them to instant execution.—“No, no,”—said that noble Judge, “let no man suffer but by the sentence of the law!”—I knew the fortitude which he displayed, and the unexhausted mercy which he shewed in the administration of the law. The sentiments which had distinguished him through life, were conspicuous in the last moments of his existence. You never can forget him; and though while I dwell upon these circumstances, your indignation may be roused against a suspected party to his fate, you must remember his dying injunction, “Let no man suffer but by the sentence of the law.”

The prisoner now stands in judgment before you: Be satisfied—be convinced, that you do not pass judgment against him, but upon full conviction by legal evidence. That victims there should be for such horrid outrages, I freely admit;—but they should be men guilty of such horrid outrages, and not those who may be supposed to be so.—Be satisfied in your consciences of the guilt of the
prisoner

prisoner before you convict him.—In receiving the evidence, be satisfied, that every doubt is removed—that the weight of the evidence is incumbent upon you—ponderously incumbent and irresistible.—Discharge your duty to the prisoner, as well as to your country.—Consider, that if instead of the prisoner, a man known to you, stood accused by such a witness as *Mahaffy*, would you feel yourselves satisfied?—and is the weight of the evidence such as to compel you, without any doubt, to find him guilty, although there is no evidence of general bad character adduced against him; and if you pass sentence upon him, you must be satisfied that you would pass the same sentence against any man in similar circumstances. I own, I think it impossible.—For what would a verdict of condemnation say?—It would be this; that upon the testimony of a single witness, to whom many men in his own regiment gave a bad character; as not worthy of credit, and of whom no man gave a good character, but one solitary individual—upon the testimony of such a man, uncorroborated by any extrinsic circumstances, against the testimony of a dozen unimpeached and unimpeachable witnesses, you would convict a fellow-subject!—I own, I feel it utterly impossible.—I have never known an instance of the kind in the course of my practice, where a single witness, standing in doubtful circumstances, as here, and uncorroborated, was considered as outweighing the testimony of even one unimpeached, and unimpeachable witness.

But in a case of life, in which if a mistake be made, it never can be repaired—in which the witness for the Crown stands unsupported, where he might have been by many witnesses, I feel bold in saying, it is impossible that a jury of this country could find a verdict against the accused. I speak without affectation, when I say, I am convinced that you will act with the most perfect justice upon this occasion. I submit the case of my client to you, with the most perfect reliance upon your honour, your fairness, and your impartiality. No jury could be impannelled, from whom the prisoner could receive a fairer trial. No Court could preside, from which he could receive a more lenient, merciful, or legal direction to a jury. In all these circumstances, he is fortunate; and I do conceive, there is but one circumstance in which he is not particularly so, and that is, in having selected me

as his counsel. He might have found others much more able to discharge the task. But whatever is deficient in me, the sagacity and intelligence of the Court will supply. To your judgment I commit the prisoner's life. If you find him guilty, I have this satisfaction, that no other jury would acquit him,—and I have this other satisfaction, that the Court is both able and willing to supply the omissions of the advocate.—Without the affectation of compliment or candour, I am content, that this case has been tried before you, who can see the strength of the prisoner's case, and the weakness of the accusation against him better than his advocate, and accordingly will pronounce a verdict of acquittal.

MR. SOLICITOR GENERAL.

My Lords, and Gentlemen of the Jury,

It is now my duty to reply on the part of the crown to the observations which have been made by the prisoner's counsel. The case requires no apology for obtruding upon you. The importance of it is a sufficient excuse. The charge made against the prisoner, and the line of defence which has been resorted to, render the case highly important. The charge, I say, makes it important; because you are not now trying a man, who was seduced to become a traitor, like those who have been tried upon the preceding days of this commission; but, if the charge be true, it stands established, that the prisoner was a distinguished leader of the rebellion, and one of those by whom some of the most violent atrocities were committed. The case is doubly important from the line of defence which has been adopted. I do not recollect any defence since the year 1798, and of the parties who were concerned in the rebellion of that year; attempted like the present—and I trust, that if the evidence for the crown shall be believed, this attempt will meet the same kind of decision which such a defence formerly met and always merits.

Gentlemen, I shall very briefly call your attention to the evidence on behalf of the crown, and then I shall endeavour to meet the objections which have been so ably urged by his learned counsel.

With regard to any part of the case, except that which attaches directly upon the prisoner, the gentlemen concerned

cerned for him have not controverted the evidence on the part of the crown—they have admitted that a rebellion broke out on the 23d of *July*, for the purpose of overturning the government of the country, that it broke out into actual and open war, for the purpose of establishing a new form of government by force of arms.

With regard to the part which the prisoner took in that transaction, much depends upon the evidence of *Mahaffy* and *Ryan*; but, gentlemen, give me leave to controvert in strong terms that assertion, which was repeated by both the counsel for the prisoner, that the testimony of those witnesses stood uncorroborated. I trust, I shall be able to shew you, that not a witness has been produced, even on behalf of the prisoner, who has not given irresistible support to the evidence for the crown. Out of his own mouth, or the mouths of his witnesses, I shall produce decisive evidence of the prisoner's guilt.

Examine then, in the first place, the testimony of those two witnesses, who were produced on behalf of the crown—they were present at the transactions of the night of the 23d of *July*—that is not controverted:—it is admitted:—see, then, the situation in which they stood—one of them is, by nature incapable of carrying on any scheme requiring bodily force—*Ryan* is afflicted with a permanent infirmity, and upon any sudden alarm, he is rendered incapable of action—and therefore, gentlemen, you must be satisfied, that if *Mahaffy* had intended to join in rebellion, he never would have selected, as his companion in arms, a man whom he knew was so debilitated by nature, as to be incapable of affording him either instruction or assistance. This circumstance sufficiently shews the utter impossibility of *Mahaffy* having intended to join in such a conspiracy.

It appears, that at the time the insurrection began, those two men were in the neighbourhood of *Dirty-lane*, in which their residence was, and which was the natural place for them to return to—much has been said of their walking out that evening, and the manner in which they have accounted for it. I submit to you, gentlemen, whether their proceeding was not natural to men in their situation—they were on their return, proceeding directly to their home, not like the wandering of the prisoner which was afterwards proved. They are met by the mob, which issued from the *depot*, where the arms were collected.—*Mahaffy* states, that the prisoner pushed and drove him
down

down into the lane. It is said, that it is highly improbable he should have known a man, whom he only saw once before;—but the prisoner was in such a situation and so occupied, that if the witness had never seen him before, he could scarcely be mistaken.—He had a full opportunity of looking at the man, supposing he had never seen him before, he saw him for fifteen minutes, during which every action performed by him was of a nature calculated to rivet on the attention of the witness, to stamp on his recollection every feature of the prisoner's in such a manner, that they could not readily be forgotten.

Gentlemen, I will not go through the evidence of these two witnesses further than as it shews the atrocities which were committed by the leader of the rebellion. The progress of the insurgents was arrested on their issuing from the depot by the barbarous act of murdering two loyal men who unfortunately fell into their hands—and while those unfortunate men were prostrate in the streets and actually writhing in the agonies of death, the prisoner encouraged the rebels to persevere in piking them, and called upon his followers, "To do their duty and to be free."—Free to do what?—Free to exercise every cruelty—to commit every outrage and enormity—to subvert the government and constitution, and to introduce riot, disorder, rapine, confusion and anarchy. The party are armed and they proceed to *Thomas-street*. The prisoner is not confined to a hiding place among the mob, where he might have escaped observation, and be obscured from view, but he appears at their head—he had the command; and is assisted by one man only in a scarlet uniform, who had the audacity to say, "That the Castle would be theirs."—The prisoner is connected with that man, whose appearance and expressions are proved by Mr. *McCreight*, and that confirms the testimony of *Mahaffy* and *Ryan*.

Now, gentlemen—what is the next transaction?—a dragoon passes by, and the man who thought fit to fire first upon him was the prisoner; that is confirmed by *Ryan*, and also by Mr. *McCreight*. But I come now to the testimony of *Ryan*, and if ever the testimony of a witness was deserving of attention, it is the testimony of that witness. If he was desirous to rescue his own neck from the halter and put it round the neck of the prisoner, as has been represented, do you think that he would hesitate to swear positively to the prisoner? If he were so profligately cor-

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rupt, as has been alleged, why should he hesitate? But with that candour which ever accompanies truth, he states, that from the state of alarm and debility he was thrown into when the blunderbuss was presented at him, he became incapable of recognising any body. He cautiously refrains from ascertaining any individual, on account of that temporary incapacity, and such caution must strongly recommend him to your favour. You will observe, however, that though he would not swear to the person of the prisoner, yet he heard the name of *Rourke* mentioned several times in the course of the transactions. It is said to have been a common name, and that many persons of that name are found in the king's army; but *Mahaffy* brings it home to the prisoner individually, stating, that he was addressed by the countrymen as General *Rourke*, and by others as Capt. *Rourke*. Is not that a corroboration of *Mahaffy's* testimony so strong, as to derive implicit credence from the mind of every man?

The next transaction with regard to the two witnesses is their flight.—The moment they had an opportunity, they acted as Mr. *McCraith* did.—He was compelled to join the rebels—he was obliged to witness their atrocities. Such was the situation also of the witnesses.—But it is said—Why not return the next morning?—But let me ask, whether it was not natural for men of their rank in life, living in that part of the town, to be impressed with a notion that they could not return with safety, thinking that the party might be successful, and that they, the witnesses, could not live there again; and with that impression, they pursue their journey to a part of the kingdom, where the family of one of them resided, where he had resided before, and where they could carry on the same business, in which they had been engaged in the city of *Dublin*.

Now, gentlemen, I come to the defence, which the learned counsel are instructed to make on behalf of the prisoner. The witnesses produced on the part of the crown are called “informers, miscreants, with the rope about their necks, and with guile in their faces, and who, to rescue themselves from death, charge innocent men and add to the crimes already perpetrated; that of murder, under colour of law.”——

Permit me to say, that there is no foundation for saying they are infamous men; or even that they are approvers—no accusation was made against them; and as applicable to
other

other cases and the general administration of the country, I must repeat, that this attempt to cry down informers, which was formerly made, when the system of the *United Irishmen* was first instituted, ought not to be practised again.—When the *United Irishmen* began to conspire the overthrow of the government, they bound their adherents to secrecy by the obligations of an oath, and then terrified every person from revealing the plot by the threats of assassination; and if any man had virtue enough to reveal the treason, and if these threats were not successful, his character was calumniated, and the party endeavoured to render such person incapable of prosecuting any traitor with effect, by the imputation of crimes against himself. Then this system was first introduced, and every man who gave information was represented as a fit object of assassination: if he escaped that, every attempt was made to blast and ruin his character and reputation.

Gentlemen, you all recollect many of the trials which took place in that period—that the constant line of defence was the same which has been adopted this day, and that any man who had acquired a knowledge of their schemes, and wished to defeat them, was instantly assailed by the grossest calumnies; every corner of the kingdom was ransacked to learn something of the man, and witnesses were brought forward in an accumulated mass to destroy his character.—When *Reynolds* gave important information, and afterwards appeared to give evidence, all *Ireland* was ransacked to procure something against his character. So in the case of *Armstrong*—all his college acquaintances were sought after, for the purpose of putting him down as an object of contempt and obloquy.

What has been attempted here this day?—exactly the same defence.—In the ordinary cases, which preceded this, during the commission, such defence was not attempted, but when a leader is brought forward, the whole party is set at work,—emissaries are dispatched to *Balbriggan*—to *Ringsend*, and to *Sandymount*—to follow the example of 1797 and 1798.—I trust, the attempt will be equally defeated, and that the result of the trial will be equally important to the public.

Gentlemen, I am only observing generally with regard to the character of informers.—that they are not to be estimated in the manner which has been represented.—Crimes can only be discovered by those who know something

thing of them, and therefore, if you reject the evidence of informers, you give impunity to crimes, and you proclaim to the guilty, that they are free from punishment.—I do not think that so much was necessary to be said in the present case—but I thought it necessary to resist this mode of defence in the first instance.—The witnesses do not appear in the character of informers—No person has charged them—there is no person to give evidence against them:—but the moment they were stopped, they told the whole business—that they were in *Dublin* on the night of the 23d of *July*, and saw the prisoner as a leader of the insurgents.

Much has been relied upon, that *Mahaffy* did not disclose to Lord *Castle-Coote*, at once, all his knowledge of the subject.—See how natural that was for a person of his situation and disposition.—He told some of the names of those whom he saw—he described others whose names he did not know—he appeared confused, and Lord *Castle-Coote* gave him time;—he deliberated in the interval which was allowed him—the names of all whom he knew are communicated, and they are proceeded against.—*Ryan* made a similar acknowledgment;—and when it is objected, that they are not deserving of credit, as being concerned in the transaction, give me leave to ask, how these conspirators are to be detected.—No loyal man could appear as a witness against them, being ignorant of their schemes; but Providence led them to press into their ranks, men who were not so sincere to them as they expected—and these men have been the means of bringing the conspirators fairly before you.—Such witnesses are not to be calumniated and repudiated as altogether unworthy of credit.—You, gentlemen, I am sure, will consider their evidence, and give it such weight as it deserves.

I will now beg of you to turn your attention to the evidence which has been adduced by the prisoner against one of the witnesses for the crown, *Mahaffy*; perhaps I ought first to ask, How came the prisoner or his friends to know, that *Mahaffy* would be a witness against him?—They could know nothing from his informations;—they did not see them:—they knew nothing from *Mahaffy*, because he is secluded from danger, and is confined. They could know nothing from the indictment, because it contains no mention of the names of the witnesses;—they could know nothing from the Grand Jury, for they are

sworn

sworn to secrecy. How, then, could the fact be known? There was no indictment against *Mahaffy*, but he was taken to the Castle, and there examined;—the prisoner might learn that, and from thence apprehend a discovery respecting himself. If the prisoner knew nothing of him, how could he learn, that he would be the witness against him?—In no other manner than from his own heart suggesting to him, that *Mahaffy* was a man who had witnessed the transactions of that night, and the atrocities committed by him, the prisoner.

The witnesses produced by the prisoner, to impeach the testimony of *Mahaffy*, may be ranged into three classes: First, Mrs. *Doyle*, and her daughter.—From the first, if ever there was a story improbable upon the face of it, you must see it was the story told by them. They have told you that *Mahaffy*, in their presence (and they represent themselves as loyal persons) announced, on the morning of the 23d of July, the intended insurrection, and proclaimed the active part which he would take in it—and yet, that after this, he left the house without any apprehension;—he returned in the evening, without any apprehension of discovery upon his mind. Can you believe, then, that he could have made such a disclosure?—But what does *Ryan* say?—he denies the conversation altogether. Observe the conduct of these two witnesses as to *Ryan*; as he had not identified the prisoner, therefore they do not attack him; they give him a good character. He says, he never heard of the rebellion until it broke out; and yet Mrs. *Doyle* swears he was present when *Mahaffy* made those declarations. Her daughter, who is produced to confirm her, is not content with her account of that transaction, but she must give a character of *Mahaffy*; she pretends to detail his history, and describes him as a robber and a thief; with such a warmth, as betrays her anxiety to assist the prisoner, even at the expense of truth.

The second class comprehends the witnesses from *Balbriggan*,—one of whom could not recollect where he slept, where he dined, or passed his time, during his residence in town, and yet he has pretended to detail minutely to you, transactions relative to the witness, which, according to his account, happened many years ago. The second witness, from the same quarter, alleged he saw *Mahaffy* commit a theft in his presence, which he now, at the distance of six years, remembers with such accuracy—but which
struck

struck him as of such little consequence at the time, that he took no notice of it whatever, not even to inform the person who lost the article alleged to have been stolen!

Then comes the account of two other persons, who stand in direct contradiction to each other—but each assuming the appearance of total ignorance of the prisoner and the subject of this trial. The first of these persons was *Martin Connor*, who was formerly in the regiment with *Mahaffy*, and now appears dressed up in the regimentals of a yeoman. He candidly acknowledged that he did not know which was the strongest side in the present rebellion. He said, he did not think of *Mahaffy*, but that *Keegan* came to solicit him, to know what he should say about him.—But *Keegan* says, that is not true—“I met *Connor*,” says he, “by accident, and he was talking of the man, and I told him what I knew,” and therefore there is a flat contradiction between them in a material point,—they discover, that they are emissaries of the party, one of the leaders of which they are anxious to save from conviction.—This is the evidence which has been adduced to impeach the witness for the Crown; and I trust you see sufficient reason to resist the attempt which has been made.

It is said, we have brought forward but one witness to support the credit of the man who has been impeached—but that person was in the regiment during the whole time *Mahaffy* was attached to it, and he proves that the only objection which prevailed against him in the regiment was, that he did not keep himself as clean as other soldiers did. But with regard to the charge of ring dropping, and other pretences, which were suggested in the brief, in expectation that some wretched witness would be had to prove them; you have nothing but the idle hearsay of some witnesses, who have pressed themselves forward in the cause of the prisoner, and yet pretend they are totally ignorant upon which side they were produced—or on whose behalf they were called. What was their design in uttering such falsehoods? To assume the appearance of disinterested witnesses—and therefore, gentlemen, if the case rested there, I might leave the decision of it to you. I feel, that it is sufficient to warrant a conviction.

But I come now to a part of the evidence which establishes the guilt against the prisoner to the satisfaction of any man, who might have been most inclined to disbelieve it—
that

that is the evidence in support of the *alibi*—the nature of that defence has been fully explained to you by Mr. PONSOMBY; and the learned counsel recommended to you to throw aside every prejudice respecting the prisoner. There is no doubt, you ought to do so,—if you ever felt any—and I admit it is a fair defence, if it be founded in truth.—But look at the evidence by which it has been supported here.—It is impossible to view it without discovering its fallacy.—The counsel for the prisoner put the instance of one of you being charged with an offence, and he asked how you would defend yourself, but under the shelter of your character in the first instance, and then by proving an *alibi*.—I should have been silent as to that point; but it having been introduced by the prisoner's counsel, let me ask, why he did not go into evidence of that kind? He tells you what the conduct of one of you would have been.—You would produce evidence to your character. Try his client by that rule; there is not a single witness adduced to his character. The learned counsel says, there is no witness to impeach the character of the prisoner. We could not examine any witness to that effect, unless the prisoner had previously given evidence in support of it. I do not mean to say, that we would have done so; but we were not at liberty to do so, if we chose; but the subject having been introduced, I will say this, that no case required so much the evidence of character as a case of this kind.—No attempt is made to shew the part which he took upon any former occasion, when he might have given proofs of his loyalty, nor has he even produced the person by whom he was employed.

In establishing the defence of an *alibi*, one would suppose, the first step would be to shew where he lived, and to shew the necessity of his leaving town that night.—But even his brother cannot state where he lived for a month before.—He is ignorant where he resided.—Can you believe that? It is impossible; then why has he concealed it?—Because we might discover from the persons with whom he resided the real object of his departure. His acquaintance, *Barrett*, is first produced to shew that he was in *Thomas-street* till past eight o'clock. Why he came there—why he left his employment—why he was sitting in a public house in that neighbourhood, he does not pretend to say.—Every other public house there was filled with armed men, or was so in a few minutes after.—What

Further evidence is given?—He is invited by an old friend to drink—but, no; such was his impetuosity to fly from the impending tumult, that he quits the company of his friend. But does he proceed down *James's-street*, and so the straight road to *Rathcoole*? No—he alters his course—no person can tell why—he passes through *Thomas-court*, and from thence to *Dolphin's-barn*;—there he sits, notwithstanding his haste, and drinks in a public house—not a word is mentioned of the brother being with him there—It is not possible to believe, that his brother was there, without the persons of the house perceiving him, and stating that in evidence to you. It occurred to the brother, as an after-thought, to make the defence complete, by watching the prisoner every moment, and therefore he thought it necessary to describe himself as his companion from the moment he left *Thomas-street* until they separated near *Jobstown*.

Now, gentlemen, with regard to the general outline of this defence, I am inclined to think, that every word of it may be true, making an alteration in one single fact, namely, the time.—I am inclined to think, that the prisoner went through every part of the road, which has been mentioned by the witnesses—stating his departure from *Dublin* half an hour later than the witnesses did, every thing they have deposed is consistent with the case on behalf of the prosecution.—Being defeated a little after ten o'clock, he goes off to *Dolphin's-barn*, and by devious ways, he makes his escape, not wishing to remain in town, where he would be known. From *Dolphin's-barn*, he proceeds to *Jobstown*, and there again he sits down to drink—and you will observe, that neither *Mathews*, nor the other witness say a word of the brother accompanying him. They not only kept him out of view, but being asked particularly as to the company, the only other person, they introduced was a carpenter, and in this respect the witnesses discover they are not telling truth, when they cannot agree with each other.

But see what the testimony of the brother is:—he comes to town to relieve the anxious fears of his mother.—What was her anxiety. Was it on behalf of a loyal and well conducted son, lest he might suffer in a conflict with rebels? No; but she apprehended he would be engaged in a rebellion against the government of the country and she wished to remove him from the scene of danger. The brother comes

comes to town for that purpose; without knowing the residence of the prisoner! and he does not take him from *Thomas-street*, until the people are collected in groups—Why not remove him earlier?—Because as long as a loyal man could shew his face, we could incontestibly prove him to be in town.—The evidence for the prisoner could therefore only remove him at a critical hour. But the prisoner, instead of hastening home, stops at every public house, and with all these intervals of rest, he is so overcome with fatigue, that he stops at a friend's house, rather than walk a few furlongs further to his father's.—Look at the man and see, whether his corporal strength was not adequate to that which might be accomplished by a delicate woman. This betrays the whole tissue of falsehood.

But it does not rest there.—Look at the account of the other witnesses.—He goes to the house of this man, who was not his particular friend, who says he left him on the next morning to go to his father's, and that he did not see any of his family the next day.—What says the brother? That the prisoner did not come home for a week, but that he heard of him the next day from *Grimes*,—the very man, who according to his own account had not seen any of the family.

But, gentlemen, do not suppose from this, that I totally disbelieve *Grimes*. I am disposed to believe what he said.—But why did the prisoner go to *Grimes*?—His conscience told him, that he could not appear at his father's house, after such crimes as he had been guilty of, and accordingly he does not venture there for a week.—Why not go there for a week? Because he *dared* not, lest a sudden search might bring him to the bar of justice. But after a week had elapsed and seeing that no search was commenced, he thought that the darkness of the night had sheltered him from observation, then he appears at his father's.

He does not produce the persons in whose employment he had been. He deserts their business—why does he forfeit the emolument of his situation—why fly from his father's house and shelter his head in the house of a stranger? You cannot account for it, except it was to conceal himself. Has he produced a witness to shew where he was during that week? If he remained in the field, skulking in the ditches, it might not be convenient to produce witnesses:—But if he remained with any honest man, he might be a witness—and therefore I cannot hesitate to say, that

that this defence is a tissue of fraud and fabrication. — The man who has a defence consistent with honesty and truth, is incapable of substituting perjury and subornation. I retort the observation made by the counsel for the prisoner. They charged *Mahaffy* with the crime of perjury. I retort it upon the witnesses for the prisoner, and say, that he has thereby aggravated his guilt.

Gentlemen, the importance of the case requires thus much from me. I will now conclude with one or two short observations. The prisoner's counsel exhorted you to reject all impressions which might have been made upon your mind, save by the evidence. I most fervently join in that exhortation, and I know from your character, that it was unnecessary to say so much. You will confine yourselves to the evidence, which you see I have done, and I trust you will feel, that it justifies the officers of the crown in bringing this case before you. An appeal was made to your humanity in which it was urged, that this man might be permitted to escape. Is it because he is superior in guilt? Because he was conspicuous in the rebel ranks—are you to let the leader escape, who ordered pikes to be driven into the bodies of his fellow creatures? Who attacked a dragoon, wearing his Majesty's uniform, and murdered him without provocation? Commit the common herd of traitors to the punishment of their crimes, says the leading counsel for the prisoner, but let the rebel general escape. Is that language to hold out to a jury? Whatever pang it may inflict upon you to condemn a fellow creature, you will feel it with less poignancy, when you try a man who led and seduced the ignorant into mischief. Do justice to your country—not by mistaken mercy to the miserable man at the bar—but by shewing mercy to the people who are by the conviction of such traitors to obtain security for their lives, and I trust the event of this trial will teach them, that they live under a law which protects them, under a law that is too strong to be resisted, and cannot be defeated by perjury.

Prisoner. My lords, may I not be heard?

COURT. Proceed, sir,—you may add what you think proper in your defence.

Prisoner. To the able defence which has been made by my counsel it will not be necessary to add any thing—
neither

neither need I pronounce any panegyric upon them. But to the reply of Mr. SOLICITOR GENERAL, I would wish to say a few words. He asks, "How could I know that *Mahaffy* was to give evidence against me, unless I was conscious of having seen him upon the night of the 23d?"—To that, I answer, that I was confronted with him, before my trial, and thereby knew, he was to be a witness against me.

As to the journey, which I took into the country—I told the reason, why I took that road—I wished to avoid the other road—*James's-street* was full of people, and every man saw, that tumult would be the consequence. Another proof, that the *alibi* was not suborned is, that I gave the same account before Major *Sirr*, when I was examined, so that it was not an after-thought.

As to evidence of character, there were many in court who could have given me a character.—And as to my employment, I was in treaty for a commission for goods, and was employed as an out-clerk, and I was out through the town in the morning procuring this commission. My brother did not know my place of abode, for I met him constantly in *Thomas-street* when he came to town.

But the SOLICITOR GENERAL said, the witnesses who proved my being at their houses upon that night at the times they stated, did not mention my brother as being with me. They were not interrogated as to that, consequently did not mention him—and as to the distance of a mile, upon which so much observation was made, it may not be much under some circumstances, but the wetness of the evening and the lateness of the hour added to a fatiguing walk, rendered an additional mile a serious matter.

As to my brother hearing of me from *Grimes*—my brother did not say so—and as to my going to my father's, my brother was not at home the next day, having gone to another farm and did not know whether I called at my father's, or not.

Mr. SOLICITOR GENERAL said he believed that most part of my defence was true, and yet that the whole of it was a tissue of falsehood—which is a most extravagant assertion.

To you, my lords, and to the jury, I return my most sincere thanks; I am conscious, I will have a just verdict.

Mr. Baron GEORGE.

Gentlemen of the Jury,

The prisoner *Felix Bourke*, is indicted for the crime of high treason and overt acts are stated, which are necessary for your observation, because you are to consider whether any of them be proved. The prisoner is charged with conspiring with others to raise and levy war against the King and to overthrow the government, and he is charged with actually levying war for that purpose.

I apprehend it will not be necessary to detain you by a detail of all the evidence,—several of the witnesses being examined by way of inducement, to shew the existence of the rebellion upon the night of the 23d of July, which fact is not questioned. The question for you to determine, will be, whether the prisoner took any part in that rebellion, and if you find, that he did voluntarily take any part in it, you will convict him—if he did not, you will acquit him.

(The learned judge here stated the evidence from his notes and made occasional observations.)

Gentlemen, you will consider how far *Mahaffy* is corroborated by *Ryan*; and whether you can reject the testimony of one without rejecting the testimony of both.

The evidence on behalf of the prisoner consists of two classes.—The first to establish an *alibi*, and secondly to impeach the witnesses for the prosecution.

It certainly is material to observe, that although the prisoner's brother gave an account of his accompanying the prisoner, yet the other witnesses make no mention whatever of him; and you will observe how particular they all are to the hour.

The Learned Judge also observed, that according to the evidence of the two women, it would appear that *Mahaffy* knew of the rebellion, and from the language stated to have been used by him, he did not appear among the rebels by compulsion, but with the same wicked intention as the others. The jury would observe, whether if *Mahaffy* had such a design, he would have taken such a companion by the hand as his assistant—a man overcome with infirmity, and whom the woman acknowledged to be of an honest
and

and good character. The jury were to consider the evidence given on the part of the crown and of the prisoner, to determine upon the credit, which was due to the witnesses—and the probability of their narratives. It was also important, that the prisoner was defended by counsel of great ability—the jury heard what was said by the advocates upon each side, and would pay due attention to the arguments which were urged. The subject being discussed at such length by the counsel rendered it the less necessary for the judge to enlarge upon it. The jury would consider how far the witnesses were supported, and whether any of them spoke deliberately false in any part; if so no credit would be attached to that witness in any respect.—They would determine, whether they really and in their conscience believed, that the mother of the prisoner hearing of this expected disturbance, sent for him to keep him from harm, and whether that message was delivered, and whether he in obedience to her orders readily and shortly departed from town? They would consider the time at which it was stated he set off—at the fall of night—the circuitous route which the prisoner took, for the purpose, as represented, of complying with his mother's request, and yet it appeared, that he did not go home—though by the account given of him, he had arrived very near that place. If they believed, that the fact was really so, and that the prisoner left town before the disturbance began, they should acquit him; or if they had any reasonable doubt upon that fact, they should acquit him. But if they could not reconcile that account to their consciences, they were bound by all laws human and divine, to find what their reason told them was the truth of the fact.

The jury retired for ten minutes, and returned a verdict—*Guilty*.

The prisoner was remanded, and at half past nine o'clock at night, the court adjourned.

On *Friday* the 9th of *September*, the prisoner *Felix Rourke* was put to the bar and asked what he had to say—why judgment should not be pronounced against him.

Prisoner. My lord, I am conscious, that I am not guilty of all the crimes imputed to me, and therefore my fortitude does not forsake me. I appeal to that God, before whose throne I must shortly appear, that I am innocent of
the

the facts sworn to by the witnesses. I have not committed murder; for I have never myself shed a drop of human blood deliberately; nor have I, by advice, or connivance contributed in any manner to the injury of a neighbour, either in person or property.—With respect to the rest, I hope I have sufficient fortitude to meet my fate.

Mr. Baron GEORGE.

Felix Rourke, you stand convicted of High Treason, accompanied as treason must ever be, with many murders; four of these murders have appeared to be committed in your presence, by your command, or with your own hand, and in the first quarter of an hour during which you acted, what further horrid actions of the like nature were done by you, whilst that rebellion continued to rage, though they have not appeared in evidence on your trial, are yet recorded against you, in a higher court, where you are still to answer.

The evidence for the Crown disclosed your conduct in the rebellion for a very short space of time; but your defence; intended for a different purpose, has disclosed how you acted, when the rebels were defeated and scattered, and when the only hope that remained to you was of effecting your escape in disguise.

In making your defence, you seem to have been under the necessity of allowing, that you were in *Thomas-street*, at a late hour of the evening of the 23d of *July*, and what is the defence you expected the Jury might credit? that you, tried in a city where you long lived—character no part of your case—received by your brother on that evening a message from your mother, desiring you immediately to go home lest you should be engaged in disturbances on that night expected in *Dublin*—that you, in obedience to those commands, set out in a hurry about half an hour before the rebellion broke out—dressed in a dark coloured surtout and nankin pantaloons—you set out at night-fall to walk home beyond *Rathcoole* nine or ten miles distant by the nearest road—yet you do not take the direct road; but go by *Dolphin's-barn*, *Tallagh* and *Job's-town*, a considerable deviation—you stop several times on the way, and always declare you are going home to your father's—yet, near home, you part your brother at the cross road—sleep in *Saggard*; you get home in the course of a week after—during which time you meet your father and brother at other places—

places—your journey on that night is sworn to have began about half past eight and to have ended between eleven and twelve.—That such movements were made by you, and at such a time, in obedience to the call of your mother, the simplicity of infants could not credit; but every thing is accounted for and reconciled to reason, when we consider these facts to have taken place two hours later on that night.

We shall find you, when rebellion was dispersed, at your brother's in *Thomas-street*, your *whitish* surtout coat changed for a darkish one, and other parts of your dress covered with nankin panraloons; setting out for your father's, fearful of pursuit, you will not venture the direct road—you shape out a course most difficult to be traced—at *Job's-town*, you find some of your friends or acquaintances on the look-out, though late the hour—and here it is, you first venture to stop, but will not venture to abide—aided by porter and whiskey you proceed on your journey, and to mislead the pursuers give out, that you are going to your father's; and when you arrive at the cross-road, you turn off to *Saggard* and from thenceforth are lurking and wandering through the country until your accounts from *Dublin* gave you reason to expect that you might return in safety.—In the mean time *Mahaffy* and *Ryan*, the terrified spectators of your crimes, and not the accomplices in your guilt, not knowing the event of the rebellion, and flying to the most distant place they knew of from the late scene of their terror, are apprehended on suspicion, and so have become the means, through which the Almighty, who will not allow treason and murder to lie concealed, has in his justice, placed you at that bar.

The sort of denial of your crime, which you have now made, will not serve you—nor can it serve to throw any discredit on the justice of the court—you say nothing as to the rebellious insurrection of which you stand convicted, and the sense in which you seem to use the word "*murder*," is the rebel interpretation of that word, and not what the Great Creator meant when he commanded "thou shalt do no murder."

An explicit confession of your guilt can only be desired for your own sake, for to us the truth of the verdict against you is fully manifest, even by the defence you have made.

And now, *Felix Rourke*, though on other occasions it may be thought a fruitless thing to attempt by argument

to reclaim men of vicious habits and heated minds.—And although we may well despair of composing to peaceful industry, minds that have been raving of a kingdom, and power, and riches, to be got by murder and crimes of every hue; yet in the unfortunate situation to which you are now reduced, and standing on the utmost limit of this world, it may be hoped that you are come back to that reason from which you have so far and so fatally wandered.

You lived in a country, enjoying more genuine liberty than any other on earth, and in the reign of a king who, for forty-three years, has been to his people a pattern of virtue, his kingdom governed by wholesome and known laws, which impose no restraint on good actions, his government administered, and justice equally dealt around by known and visible agents accountable and responsible for their conduct, under such protection and in times most prosperous, you and your associates could not rest.

And see what an exchange you have made; against all reason, you voluntarily became the sworn slaves of an invisible *Provisional Government*, and that government the slave of a foreign usurper.

And pray who or what is that *Provisional Government* to which you are thus surrendered soul and body?—Is it a single tyrant, or a many headed monster?—Is it self created, or how is it appointed?—Is it *French* or *Irish*, or of what country is it?—Is it self-interested, or public spirited?—If it abuses you to whom are you to complain, and of whom is the complaint to be made?—You neither knew, nor cared, nor considered how those things were—one excellence it had and that was enough—it promised to break the bands of society and let anarchy and murder loose to draw in numbers to its standard—it works on the passions of the profligate, and the fears of the timid by the most lofty boastings—and when deluded men are to be led out to their destruction—when they are to be driven as a herd of beasts to slaughter—then extravagant promises are made, to set them on impossible projects.—They are told nineteen counties would join; but this is fulfilled and ends in detachments from the *Kildare* rebels, joined by the criminals of two *Dublin* parishes.—What is next?—You are led out to carry by assault—the Magazine—the Barracks—and the Castle of *Dublin*.

And

And how has all this ended?—You, who were to have defeated a garrison of three thousand men, horse, foot, and artillery, are routed and cut up by part of the *Cork-street* and *Coombe* guard, in all not one hundred soldiers.

You who were to have triumphed over the veteran and experienced officers of a great army, and all the loyalty of a great city, are defeated by the conduct and courage of lieutenants *Brady* and *Douglas*, who put a stop to your massacres and scattered you, like chaff before the wind; and much of the guilt, which was then saved by flight from the edge of the sword, appears to have been reserved for the hand of the law.—Such has been the fate of this rebellion, and of all rebellions that have gone before, and will be of any that may follow.

Thus all men see, that this rebellion is great only in the magnitude of its wickedness and folly, and in every other respect contemptible—and were it not for the horrid and lamentable murders then committed it would be ridiculous also.

But, by God's Providence, that which was designed for our disgrace, or our destruction, serves only to place us in a posture of ten fold greater security, and the ranks of honour are now filled with those who will defend the liberties of their country against the designs of the ferocious invader.

Such is the cause in which you have sacrificed your life.—Think now what ought to be your conduct for the few minutes that remain—ask your own heart, whether it will help to reconcile you with an offended God, if you shall, by seeming to glory in your guilt, encourage others to go the road which has led to your ruin.—The sins and the crimes of that fatal night got an early check—and though they were not the tithe of what you expected to commit—yet are they frightful!—Unhappy man! though the rest of your life had been immaculate, you have great need of repentance.

The learned Judge then pronounced the sentence in the usual form.

The Prisoner was executed upon the following day at *Rathcoole*.

Counsel for the Crown.

Mr. Attorney General,

*Mr. Prime Serjeant, **

Mr. Solicitor General,

Mr. Plunket, ¹⁸⁰⁵ A. S. S. J. ¹⁸⁰⁶ Ser. J. ¹⁸⁰⁷ Ser. J.

Mr. Mayne,

Mr. Townsend,

Mr. Ridgeway,

Mr. O'Grady.

Crown Solicitors,

T. and W. Kemmis.

Counsel for the Prisoner.

Mr. Curran,

Mr. Ponsonby.

Assistant Counsel.

Mr. Mac Nally.

Agent, Mr. W. L. Walker.

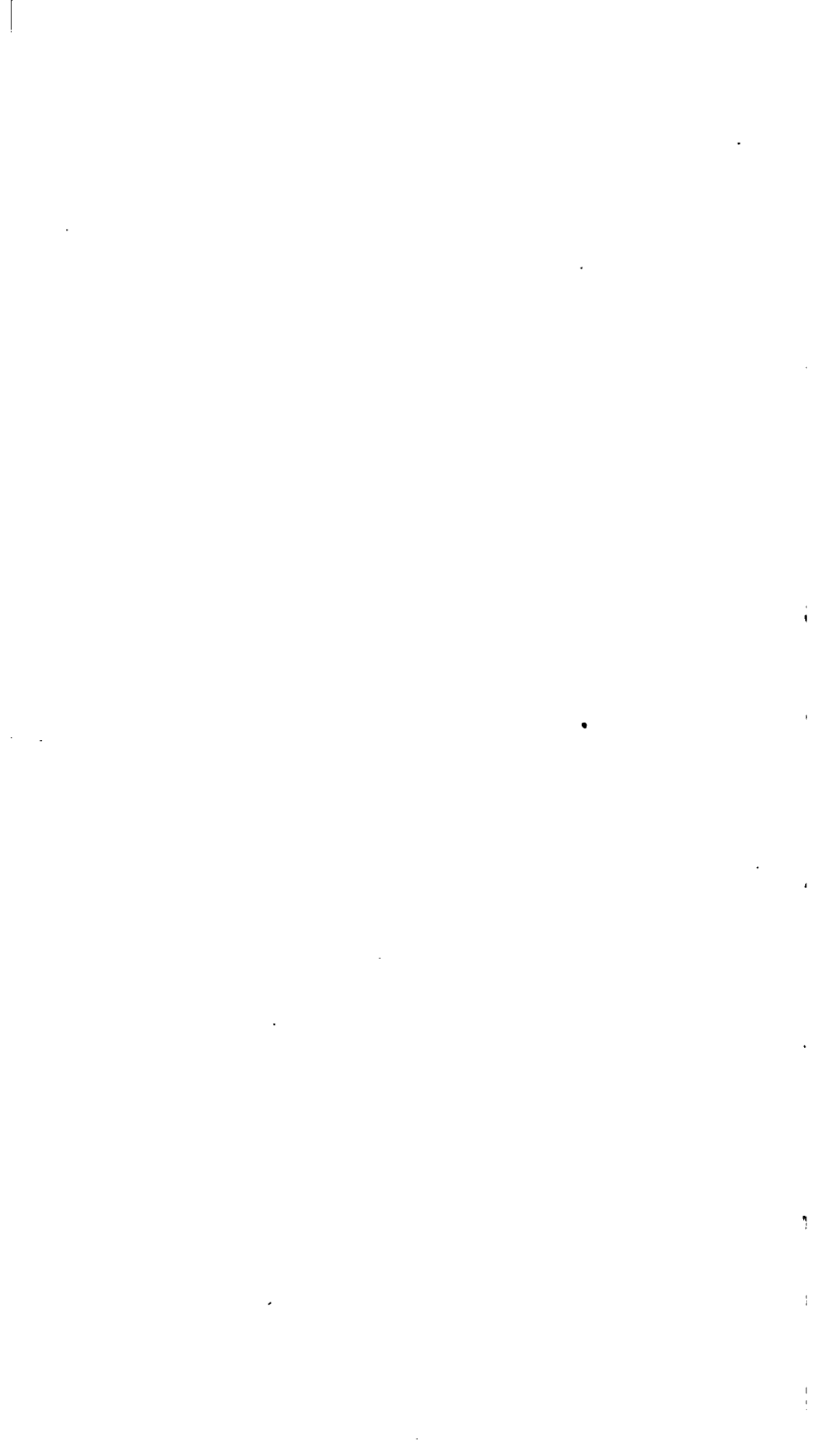
* Mr. Prime Serjeant was prevented from attending the former trials, having gone the Munster Circuit, as Judge of Assize.

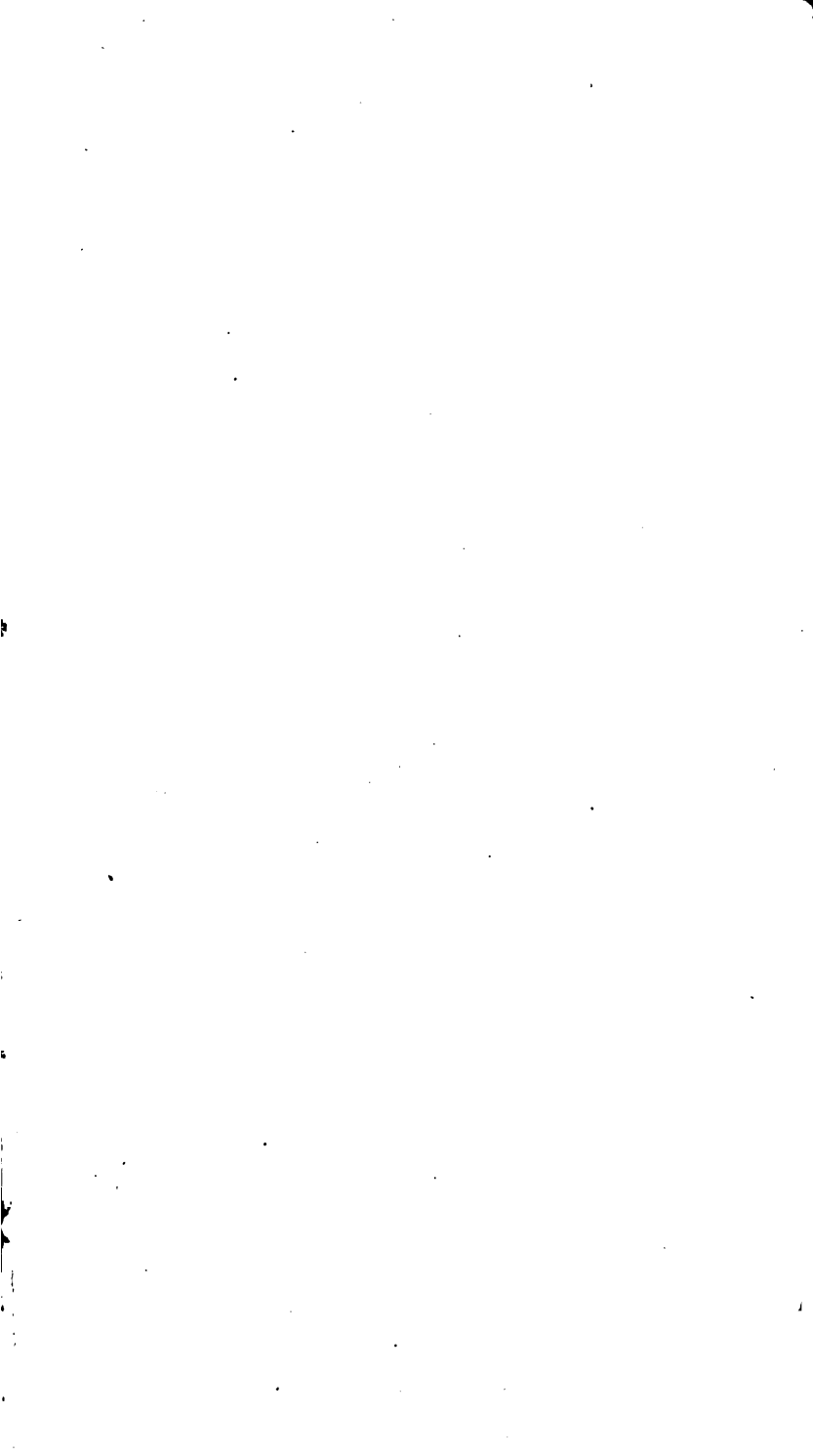


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